

THE REPUBLIC OF UGANDA
THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
(CADER)

CAD/ARB/NO.24 OF 2012

OMEGA CONSTRUCTION APPLICANT

V.

ATTORNEY GENERAL RESPONDENT

RULING

The Chamber Summons Application was filed before CADER on 16th August 2012.

The matter was set for hearing at 10.00a.m. on 27th August 2012.

The Respondent did not file any Affidavit in Reply.

Mr. Elison Karuhanga appeared for the Respondent.

Mr. Elison Karuhanga's submissions requested for adjournment of the matter given that the Attorney General's department had not yet consulted the client (Ministry of Works, Housing & Communication – as it then was).

The Attorney General's consultation had not taken place because the Hon. Peter Nyombi we were informed is caught up in London handling the Heritage Oil arbitration case. On the other hand Ms. Patricia Mutesi is in Maputo and will return back after a fortnight.

I have taken these submissions into account.

However on deep reflection, the reasons advanced do not convince me that they are sound enough, for reasons which I shall also explain further on.

I therefore decline to grant the adjournment.

It has been evidenced before me that the contract in dispute has arbitration clause 67.3, which states,

“Any dispute arising in connection with this contract which cannot be amicably settled with in (sic) 30 (thirty) days after receipt by one party of the other party's request for such amicable settlement shall be submitted by either party to arbitration in accordance with Arbitration and Conciliation Act Cap.4. The place of Arbitration shall be in Kampala and the language to be used in Arbitral proceedings shall be English.”

For clarity of mind, I shall restate the sequence of events, which have been evidenced before me.

1. The contract was awarded to the Applicant on 6th April 2005 (Annex A).
2. The Applicant successfully completed the works as evidenced by the Final Completion Certificate, which was issued on 22nd October 2010 (Annex B).
3. The Applicant served a demand note upon the Respondent on 31st January 2012 (Annex C).
4. The Applicant issued the notice of Appointment of the arbitrator on 6th August 2012 (Annex D), notifying the Respondent that it would move on 10th August 2012 to file the motion for the compulsory appointment of an arbitrator.

In reality the Applicant filed the Application on 16th August 2012.

Reverting back to the application for an adjournment, I see that what I was being asked to do was to slow the wheels of justice.

I found this prayer untenable given that there appears to have been no credible effort by the Respondent to honor the mutual undertaking to amicably resolve matters arising from the contract.

I also find that no plausible explanation was offered explaining why the Respondent would not have taken advantage of technology to handle matters pertaining to this file. It is not acceptable in the modern day world for counsel to rely on travel and discount the benefits of technology, which date back from telex and fax communication to the modern device of emails, mobile phone calls and expedited mail delivery such as DHL.

Consequently I find that this Application was not challenged in essence.

I also find that the Application has merits and I accordingly appoint Stephen Musisi as the arbitrator. In case Stephen Musisi is not able to accept this statutory appointment for any unforeseen event under S.12(1) Arbitration and Conciliation Act, then the matter shall be referred to Mr. Kafuko Ntuyo or Ms. Jackie Nakalembe.

Should Mr. Stephen Musisi not take up the appointment, then the alternative arbitrators can only be approached in the sequential order listed.

Costs of the Application are awarded to the Applicant.

Dated at Kampala on the 10th day of September 2012.

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Jimmy M Muyanja
Executive Director
CADER.

Delivered before both counsel.

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