

**THE REPUBLIC OF UGANDA**  
**THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION**  
**CAD/ARB/NO.17 OF 2013**  
**[ARISING FROM U.I.P.E ADJUDICATION NO.6 OF 2013]**

**LUBMARKS INVESTMENTS LIMITED ..... APPLICANT**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY ..... RESPONDENT**

**RULING**

1. Kampala Capital City Authority and Lubmarks Investments Ltd executed an Agreement for Periodic Maintenance of Paved Roads (Coronation, Mackay and Sepiriya-Mukasa Roads) Central Division on 16<sup>th</sup> February 2012.
2. The Agreement in Para.2 informs us that the General Conditions of Contract (GCC) and the Special Conditions of Contract (SCC), are constituent parts of the Agreement.
3. The pertinent GCC and SCC clauses state as follows: -

*GCC - 25.3 ... Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.*

*GCC - 25.4 Any arbitration shall be conducted in accordance with the Arbitration law of Uganda, or such other formal mechanism specified in the SCC , and in the place shown in the SCC.*

**Section 8. Special Conditions of Contract**

*The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC).*

*Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.*

<i>GCC Clause Reference</i>	<i>Special Conditions</i>
<i>GCC 25.4</i>	<i>The arbitration shall be conducted in accordance with the Arbitration law of Uganda. Arbitration shall take place at: UIPE offices – Kampala, Uganda.</i>

4. It is common ground between the parties, that the: -
- a. dispute, which had arisen, has been determined by the Adjudicator;
  - b. Adjudicator's award delivered on 5<sup>th</sup> April 2013, was to the Applicant's favor; however the Applicant seeks to invoke the arbitration process because they are not satisfied with the amounts awarded;
  - c. Applicant received the Award on 15<sup>th</sup> May 2013;
  - d. Respondent received notice of the Award on 24<sup>th</sup> May 2013;
  - e. Applicant issued a notice to the President U.I.P.E on 21<sup>st</sup> June 2013, stating it's wish to refer to arbitration the prolongation time and percentage of average daily turn over for time related costs. More specifically the notice requested the President to "*review ... the adjudicator's decision under the above mentioned key areas*";
  - f. Applicant issued a second notice to the President U.I.P.E on 24<sup>th</sup> June 2013, which stated "*Having been dissatisfied with the amount awarded by the presiding adjudicator the claimant now seeks to refer the decision made therein to an Arbitrator as stipulated under Clause 25.3 of the GCC. [Enclosed herewith is the award]. The purpose of this letter is therefore to notify you that the Claimant seeks to refer the above stated award to an Arbitrator for further action and it's our humble appeal that you furnish us with a typed copy of proceedings*";
  - g. 29<sup>th</sup> July 2013 letter from President U.I.P.E advised "*Pursuant to GCC 25.54 (sic) under the Special Conditions of the Contract, you are advised to initiate an arbitration (sic) process in accordance with the Arbitration law of Uganda.*"

5. The Application before CADER prays “*The Appointing Authority (CADER) appoints on Arbitration an Arbitrator on this dispute between the parties.*”

6. The Affidavit deposed by Moses Sebyala Kiwanuka further states:-

*“6. THAT the Applicant is particularly dissatisfied with the way the calculations of the amounts awarded by the Adjudicator were erroneously made and thus wrote to him intimating him of the Applicant’s decision to have the matter arbitrated upon as stipulated in the contract of works. [Attached marked “F” “G” and “H” are photocopies of the numerous correspondences addressing the issue of appointment of an arbitrator].*

*7. THAT Applicant now seeks to have an Arbitrator appointed in order to revisit the calculation of the amounts awarded by the Adjudicator in **Adjudication Case No. 06 of 2012.***

*8. THAT I swear hereto in support of an application for appointment on arbitration an Arbitrator on this dispute between the parties.”*

7. Applicant’s counsel argued that the Application was lodged promptly before CADER on 27<sup>th</sup> September 2013 pursuant to the UIPE letter dated 29<sup>th</sup> July 2013.

8. Respondent’s counsel argued that the arbitration clause uniquely did not require consent to finalize the arbitrator’s appointment.

9. The issue then is whether CADER can effect the compulsory appointment of an arbitrator under **S.11 Arbitration and Conciliation Act [ACA]**, when a party has not invoked it’s right to do so.

10. GCC Clause 25.3 stipulates, inter alia “*Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision.*”

11. Applicant's reliance on the entirety of **S.11 ACA** necessitates that we must take note of what the arbitration clause states or does not mention in respect of the Arbitrator's appointment.
12. It is clear from the arbitration clause that the parties: -
  - a. had in mind a one-person arbitration tribunal;
  - b. did not outline any procedure for appointment of the arbitrator;
  - c. did not delegate the task of appointment of an arbitrator to any third party or appointing authority;
  - d. did not specify the arbitrator's qualifications.
13. We can now with clarity cite the pertinent parts of **S.11 ACA**, in respect of a one-manned arbitration tribunal.

**11. Appointment of arbitrators.**

*(2) The parties **are free to agree on a procedure of appointing the arbitrator or arbitrators and if there is no agreement**—*

*(b) in an arbitration with one arbitrator, the parties shall agree on the person to be appointed.*

*(3) Where—*

*(b) in the case of one arbitrator, the parties fail to agree on the arbitrator, the appointment shall be made, upon application of a party, by the appointing authority.*

14. I find the counsel Dickinson Lony Akena rightly observed that the arbitration clause in issue does not require any collaborative act on the Respondent's part.

The clause appropriated the right to appoint an arbitrator only to the aggrieved party.

Appropriation of the sole right to appoint an arbitrator is what S.11(2) ACA envisages.

15. It is my regretful conclusion that the Applicant continually expressed the desire to proceed with arbitration but never did actually appoint the arbitrator.

16. It appears to me that the Applicant, twice fell under the mistaken impression, that the powers to appoint the arbitrator lay with the President UIPE and later on CADER.
17. My reading is that S.11 ACA provisions only apply where the inter-party collaboration mechanism has failed.
18. I therefore decline to grant the prayers sought by the Applicant.
19. Each party shall bear its own costs.

**Dated at Kampala on the 12<sup>th</sup> day of December 2013.**

.....  
**Jimmy M Muyanja**  
**Executive Director, CADER.**