

THE REPUBLIC OF UGANDA
THE CENTRE FOR ARBITRATION AND DISPUTE
RESOLUTION
[CADER]

CAD/ARB/NO.29 OF 2016

GLOBAL TECHNICAL SERVICES
& GENERAL AGENCIES LTD
APPLICANT

VERSUS

KEC INTERNATIONAL LTD
RESPONDENT

Applicant counsel.

Allen Yoboka - Katarikawe & Co. Advocates.

Respondent counsel.

James Tamale - Kaaga & Co. Advocates.

RULING

1. On 25th March 2016, a sub-contract agreement was concluded between Kec International Ltd (Respondent) and Global Technical Services & General Agencies Ltd (Applicant).
2. A dispute appears to have arisen between the parties and they have not resolved the formulation of the arbitral tribunal, hence these proceedings.
3. The Application in itself poses a further unique challenge because it now refers to Global Technical Services and General Agencies LTD, which "Limited" (hereinafter referred to as **LTD**) company is not reflected in the text and letter of the 26th March 2016 sub-contract.
4. The Respondent's Affidavit in Reply strongly disputes the fact that the party is a **LTD** company.
5. Upon careful perusal of the Application and the supporting Affidavit, I cannot help but notice that the word LTD appears only in the case citation papers prepared by the Applicant's law firm, Katarikawe & Co. Advocates.
6. Therefore the Respondent's deposed reply objecting to the **LTD** description of the Applicant company is restricted to the case citation.
7. Fundamentally existence of the 26th March 2016 contract is not disputed.
8. The Respondent's deponent Anil Kumar in Para.7 deposes "*that I have read and understood the Chamber Summons and the Affidavit in Support thereof deposed (sic) by Mr. John Kaggwa and the*

facts surrounding the claim giving rise to the application are well known within my own knowledge to depone (sic) to this Affidavit”, but does not in the ensuing paragraphs depose to the factual issues surrounding the 26th March 2016 contract.

9. So on the one hand the Applicant’s counsel, erred in failing to explain within the pleadings why the word **LTD** had been inserted.
10. Then on the other hand Respondent’s counsel pleadings focused on the presumed mistaken citation provided by the Applicant’s Counsel.
11. **Article 126(2)(e) Constitution** binds all to the expectation that substantive justice shall be administered without undue regard to technicalities.
12. My take is that that **Article 126(2)(e) Constitution** inversely places a more onerous burden upon counsel to serve the cause and course of justice by letting go of technicalities, in favor of substantive justice; which in this case would mean not making legal issues of slip of pen errors or omission.
13. Therefore it is incumbent on Applicant counsel to justify within the pleading the insertion of **LTD** and equally incumbent on the Respondent counsel to investigate the factual basis of the transaction between the parties (by example extracting certified copies from Uganda Registration Services Bureau to prove that the Applicant is a registered Business name and not a **LTD** company.
14. Both counsel are bound to serve the cause and course of justice by alluding to every single truth as obligated by **Regulation 17 Advocates**

(Professional Conduct) Regulations, S.I. No.267-2, which reads as follows,

“17. Duty of an advocate to advise the court on matters within his or her special knowledge.

(1) An advocate conducting a case or matter shall not allow a court to be misled by remaining silent about a matter within his or her knowledge which a reasonable person would realise, if made known to the court, would affect its proceedings, decision or judgment.

(2) If an irregularity comes to the knowledge of an advocate during or after the hearing of a case but before a verdict or judgment has been given, the advocate shall inform the court of the irregularity without delay.”

15. I therefore prefer to err on the side of caution and grant the order for appointment of the arbitrator.
16. However the costs are instead rewarded to the Respondent, because the state of pleadings with the presumed error **LTD**, demanded that the Applicant’s counsel were immediately under obligation to clear this technical error, by drafting a sound rejoinder Affidavit, which would have put to the final nail to the coffin of the **LTD** technicality argued by both counsel.

Dated at Kampala on the 1st day of September 2016.

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EXECUTIVE DIRECTOR