

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

**CAD/ARB/NO.31 OF 2017**

**DOTT SERVICES LTD ..... APPLICANT**

**VERSUS**

**UGANDA NATIONAL ROADS AUTHORITY .... RESPONDENT**

**REPRESENTATION**

**Applicant Counsel**

**Enos K. Tumusiime – Tumusiime, Kabega & Co. Advocates**

**Respondent Counsel**

**Titus Kamywa – Uganda National Roads Authority.**

## RULING

1. This application is made under **Section 11(2)** and **11(3)(b)** and **Rule 13 First Schedule, Arbitration and Conciliation Act** [hereinafter referred to as the **ACA**].
2. The applicant seeks the statutory relief of compulsory appointment of the arbitrator.
3. The following facts are agreed between the parties.
  - a. The “Contract Agreement” for rehabilitation of the Nakalama-Tirinyi-Mbale Road (102)km was concluded on 2nd February 2015 between Dott Services Limited and Uganda National Roads Authority [*UNRA*].
  - b. The respondent, on 9th May 2017, issued a letter “*terminating the contract for convenience*”.
  - c. The applicant’s 10th May 2017 letter requested the President Uganda Institute of Professional Engineers [*UIPE*] “... *to propose three nomination (sic) for the Parties concurrence on one adjudicator...*”.
  - d. The respondent rejected the request to refer to adjudication in the 13th April 2017, by mentioning in part,

*“Sub clauses 25.2, 25.4 and 26 of the GCC should be read and construed in tandem with Clause 24 of the GCC. In relation to the above clauses, you are silent about which decisions taken should be referred to the adjudicator.*”

*... In the absence of any aggrieved decisions taken, your request for appointment of an adjudicator falls short of the requirements of clause 24 of the GCC, for which the*

*adjudicator should base his decisions under sub clause 25.2 of the GCC.*

*Thus in view of the above we feel that your request for an adjudicator is merely speculative and will be waste of resources to which the Authority will be held accountable as there are no decisions to be adjudicated”.*

- e. Following UNRA’s refusal to concede to the appointment of an adjudicator, the applicant on 10th May 2017, then requested the respondent to concede to the appointment of the suggested arbitrator.

The pleadings before me do not indicate further action by either party regarding the request to proceed to arbitration.

4. It is against this background, that respondent counsel opposed the application for failure to prove the project manager’s decision.
5. The issue is whether the respondent was right to maintain that the project manager’s decision was a precondition to the adjudication reference?
6. The clause in issue reads as follows,

**“GENERAL CONDITIONS OF CONTRACT  
[GCC]**

**24. Disputes**

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to any Adjudicator appointed under the contract within 14 days of the notification of the Project Manager’s decision.

## 25. Procedure for Disputes

25.1 Unless otherwise specified in the SCC, the procedure for disputes shall be as specified in the GCC 25.2 and 25.4.

25.2 Any Adjudicator appointed under the contract shall give a decision in writing within 28 days of receipt of a notification of a dispute, providing that he is in receipt of all the information required to give a decision.

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.

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 un the SCC.

### SPECIAL CONDITIONS OF CONTRACT [SCC]

GCC 25.4	The arbitration shall be conducted in accordance with the Arbitration law of Uganda.  Arbitration shall take place at: Kampala – Uganda.
GCC 26.1	The Appointing Authority for the Adjudicator is: The Uganda Institution (sic) of Professional Engineers.”.

7. To the critical eye, Clause 24.1 requires the Contractor to express belief “*that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken*”.

8. In effect the reference to adjudication need only be premised on the Contractor's belief.
9. Assuming the request to the UIPE was correct, then the President UIPE ought to have appointed the adjudicator upon receipt of a request simply because this is the forum chosen by the parties where the determination will be made as to whether the belief that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, is right or wrong.
10. In the same vein Clause 24 does not require proof to the Respondent of the decision, which the Applicant believes was taken by the Project Manager.
11. SCC provisions supplement the GCC. In the case of conflict the SCC prevails over the GCC.
12. The five page SCC, does not make provision for disputes where procedure shall not be the one outlined in Clauses 25.2, 25.3 and 25.4.
13. Therefore Clause 25.1 is distinct from Clause 24.1 because, it is the general provision for reference of disputes, which are not specified in the SCC.
14. This view is reinforced by Clauses 25.2 and 25.3, which specifically mention "*any adjudicator appointed under the contract*".

The term "*under the contract*" is no doubt wider than the Clause 24.1 ground of belief "*that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken*".

15. Therefore the Adjudicator envisaged by preside over all other contractual disputes arising from the "*Contract Agreement*".

16. It goes without saying that it is regretful that the office of the President Uganda Institute of Professional Engineers did not bless the parties with a response, following Applicant's request for a list of adjudicators was delivered on 12th April 2017.

Perusal of the Contract Agreement would have illuminated the fact that the Uganda Institute of Professional Engineers had no role to play since what the Applicant did not report that any disagreement on appointing a new adjudicator under Clause 26.1, following the resignation, death or necessitated change arising from the employer-contractor agreement that the previously appointed adjudicator was not functioning in accordance with the Contract provisions.

17. I therefore find that:-

- a. the applicant was at liberty to seek appointment of an adjudicator under Clause 25.2 to 25.3 GCC.
- b. the respondent's insistence on proof of a Project Manager's decision amounted to usurpation of the Clause 24.1 GCC adjudicator's jurisdiction, before whom this proof was to be adduced. The respondent's outlook is at odds with the applicant's 10th April 2017, adjudicator appointment request letter which does not base the quest on any Project Manager decision;
- c. for any other dispute arising from the "*contract agreement*", then the Adjudicator ought to be appointed under Clause 25.2;
- d. the respondent's prudent response, on 13th April 2017, ought to have been a redirection to the applicant that the power to appoint the adjudicator lay with the parties themselves – *B.M. Steels v. Kilembe Mines*, CAD/ARB/10/2004; *Roko Construction v. Aya Bakery (U) Ltd*, [2007] UGCADER 1 and *Penta Consulting Ltd v. Uganda Telecom Limited*, [2017] UGCADER 1.

The applicant was correct to trigger the adjudicator appointment by requesting the office of the President UIPE to provide a list of adjudicators for the parties consideration.

- e. The office of the President UIPE ought to also have provided guidance to the parties, one way or the other.
- f. The request instant application is not right to pray for an arbitrator given that this jurisdiction only emerges from the decision of an arbitrator.

18. Taking into account errors on the part of office of the President UIPE and the respondent's misdirection, then the necessary measure under Section 11(4)(c) ACA is to an adjudicator.

19. The appointed adjudicator shall be listed in the consequential ruling.

20. The applicant is granted costs of the Application.

**Dated at Kampala on the 7th of June 2017.**

**EXECUTIVE DIRECTOR  
CADER**