

THE REPUBLIC OF UGANDA

**THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
[CADER]**

CAD/ARB/61/2017

PLINTH TECHNICAL WORKS LTD ----- APPLICANT

VERSUS

**MBALE MUNICIPAL
LOCAL GOVERNMENT COUNCIL ----- RESPONDENT**

REPRESENTATION

Applicant Counsel

Mr. Kagoro Friday Roberts
Muwema & Co. Advocates

Respondent Counsel

Mr. Masaba Peter
Senior State Attorney.

RULING

The parties executed the Agreement for construction works for Mbale Municipal Local Government Council roads, on 2nd June 2014.

The Applicant possess a settlement agreement which compromised the dispute which had arisen the settlement agreement has hitherto not been honored.

The Applicant's Settlement Agreement is derived from Annex D which reads as follows,

“Minutes of the meeting held between Mbale Municipal Council & Plinth Technical Works on 22nd August 2017 in Town Clerks Office

Min 3: Remarks from Town Clerk

The Town Clerk welcomed all members present and appreciated all of them for turning up for the meeting. She told members that the meeting was intended for the contractor Plinth Technical Works to hand over the site to Mbale Municipal Council and also settle any payments due to the contractor Plinth technical (sic) Works.

Min 6: Discussions and Way forward

Following the above presentations and discussions the meeting resolved as follows: -

1. That Mbale Municipal council settles Plinth Technical works shillings 1,984,000,000 after verification by the supervising consultant. This figure includes; measured works, Claims, Sub contractors, Tororo cement suppliers including and other suppliers and taxes.

Signed by
Namulondo Tappy
Ag. Town Clerk
Mbale Municipal Council

Nyaribi Rhoda
Secretary
Coordinator Mbale Municipal Council

IBM Mbazi
Country Director
Plinth Technical Works Ltd

Babiha Richardson
Project Mnager (sic)
Plinth Technical Works Ltd”

It is against this background that the Claimant seeks to enforce the Settlement agreement through arbitration proceedings.

The current dispute between is as to whether the settlement agreement is envisaged by the arbitration clause.

The Respondent opposes the Application because: -

- 1) the arbitration is likely to hinder or disrupt the ongoing verification exercise; see Paragraphs 18 and 19 deposed by Waniaye Khatuli Kenneth in the Reply Affidavit;
- 2) Clause 26 General Conditions of Contract provides that the appointing authority for the adjudicator is the Uganda Institute of Professional Engineers;

- 3) the Applicant did not provide a notice of reference to arbitration
- 4) has deposed [Paragraphs 18 and 19] opposition to the Application because the arbitration proceedings would hinder and disrupt the ongoing verification exercise.

The dispute resolution clause reads as follows,

“24. Disputes

Para.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 notification of the Project Manager’s decision.

25. Procedure for disputes

Para. 25.1

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

Para. 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.

Para. 25.3

Any Adjudicator appointed under the contract shall be paid by the hour at the rate specified in the SCC, together with reimbursable expenses of the types specified in the SCC and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. 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.

Para. 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.

Special Conditions of Contract

GCC 25.1	The procedure for disputes shall be as specified in GCC 25.2 to 25.4
GCC 25.4	The arbitration shall be conducted in accordance with the Arbitration Law of Uganda. Arbitration shall take place at: Mbale in Uganda.

The scope of Clause 25.1 is **disputes** arising.

Clause 25.3 is limited to the extent it defines arbitration as an appeal arising from the adjudicators award. This appeal is permitted by the Arbitration and Conciliation Act which empowers the parties to structure a process which ultimately terminates with the arbitration process – see *Pile Corporation Ltd versus Twed Property Development Ltd, CAD/ARB/004/2018* and *Centrotrade Minerals & Metal Inc. versus Hindustan Copper Limited*¹, Supreme Court of India.

Clause 25.4 then refers to **any arbitration** in tandem with the wide cluster of disputes envisaged by Clause 25.1.

Therefore the Clause 25.4 arbitrations are not confined by the Clause 25.3 adjudication which is subject to appeal before an arbitrator.

We are aided in this construction by the absence of a reported decision of the project manager.

It is common between the parties that the project manager was not party to the settlement agreement from which the intended arises.

The application has merits.

Costs of the Application are granted to the Applicant

Dated at Kampala on **09th March 2018.**

¹ <https://barandbench.com/wp-content/uploads/2016/12/Centrotrade-minerals-v.-Hindustan-copper.pdf>

EXECUTIVE DIRECTOR