

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)**

HCT-00-CC-MA-0433-2007

(ARISING FROM ARBITRATION AWARD NO. 001 – 2006 HCT-00-CC-MA-0461- 2006)

ROCK TRUST CONTRACTORS (U).....APPLICANT

VERSUS

KIBALE DISTRICT LOCAL COUNCILRESPONDENT

BEFORE: HON. JUSTICE LAMECK N. MUKASA

RULING:

This is an application brought by Notice of Motion under Article 139(I) of the Constitution, Section 39 (2) of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules for order that:-

1. The award by the arbitrator from the Uganda Institute of Professional Engineers dated October, 2003 be revised to include award on certificates Nos 1 and 2.
2. Costs of this application be provided for.

On the off set I must point out that none of the provisions cited in the application applies for revision, save that section 39 (2) of the Judicature Act states:-

“Where in any case no procedure is laid down for the High Court by any written law or by practice, the court may in its discretion, adopt a procedure justifiable by the circumstances of the case.”

However powers of revision are granted to the High Court by Section 83 of the Civil Procedure Act in respect to cases determined by any magistrates' court. The award in issue was by an Arbitrator thus outside the provisions of the section.

Prior to this application there had been HCT-00-CC-MA-0461 of 2006 before this court arising from the same arbitration award which is subject of this application and was between the same parties, though in that application the current Applicant, Rock Trust Contractors (U) Ltd, was the Respondent.

The grounds in support of this application are that:-

- (a) The Arbitration Tribunal made the award in respect of Certificate No.3 but failed to finally and conclusively dispose of all the legal differences before it, in particular on Certificates No. 1 and 2 in respect of which the arbitrator decided that the applicant resolves the matter pertaining to those earlier certificates.
- (b) The applicant at first attempted to execute the arbitration decision by making a company resolution to recover the claim under the said certificate from the respondent but this line was rejected by the High Court on an application by the respondent i.e. HCT-00-CC-MA-0461 of 2006.
- (c) The Applicant, after the High Court decision, asked the Respondent to pay certificate numbers 1 and 2 or else would be sued and the respondent acquiesced.
- (d) The Applicants option to recover payments on certificates numbers 1 and 2 is to apply in this court to revise the arbitral tribunal's decision on certificates 1 and 2 and substitute it with the order for the Respondent to pay the applicant the amount in those certificates.
- (e) The arbitral tribunal and the High Court in Miscellaneous Application No. 461 of 2006 (Commercial Division) held that the respondent paid a wrong party instead of the applicant in respect of Certificates number 1 and 2.

In paragraph 8 of the affidavit in support of this application it is stated that the arbitrator made an error in law when it failed to finally dispose off all the legal differences put before it. Despite having found that the payments in respect to certificates number 1 and 2 had been made to a wrong party the adjudicator did not conclusively pronounce himself on the recovery thereof. Instead the adjudicator stated:

“and that matter pertaining to earlier payments be resolved by management of Rock Trust Contracts Ltd.”

And in the Adjudication Record under Award the Adjudicator stated:-

“Payments made earlier to the attorney are matters to be handled by management of Rock Trust Contractor Ltd and are not subject of this adjudication.”

The adjudication only ordered certificate No. 3 to be paid. It is the above order which M/S Rock Trust Contractors (U) Ltd, by this application seeks this Court to revise by including certificates Nos 1 and 2. When asked why he had adopted the produced in this application Mr. Erick Muhwezi, Counsel for the applicant, stated that the Arbitration and Conciliation Act did not provide for any procedure in the circumstances.

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With due respect to counsel, he was wrong. In my ruling in Miscellaneous Application 461 of 2006 I clearly pointed out the procedure provided by the Act to be followed where there is an error in an arbitration award. The procedure to follow is provided by section 33 of the Arbitration and Reconciliation Act Cap 4. It provides:-

“33 (4) A party may, within thirty days after receipt of the arbitral award, request the tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.”

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitral award within thirty days.”

There is no record to show when the adjudicator gave the award. The award is not dated and it is not clear when the Applicant received the award. However, it is clear that following receipt of the award the Applicant convened a meeting on 20th February 2006 at which it was resolved.:-

“(a) Kibaale District Council pay to the Company the money stated in the said certificates number 01 and 02 together with certificates No. 3 for shs31, 638,377 as awarded.

(b) That certificates numbers 01, 02 and 03 be registered in High Court together with the Award dated October 2003 made by Uganda Institute of Professional Engineers against Kibaale District Council for payment to the company.”

From the Applicant’s Resolution above it is clear that the Arbitration Award was made sometime in October 2003 and must have been received by the Applicant before 20th February 2006.

The Applicant did not seek additional award in respect of certificate No. 1 and 2 which the adjudicator had omitted, as provided by section 33 (4) of the Act. Instead the applicant chose to smuggle the Certificates into the award by way of its Resolution and seeking registration thereof by the High Court.

It is clear that there is a statutory limitation of the period within which to proceed under section 33 (4) of the Act. The application for an additional award must be made to the Arbitral tribunal within thirty days after receipt of the arbitral award. Even if the date of the Resolution is considered as the date of receipt of the award i.e. 20th February 2006, the thirty days have long expired.

In an effort to overcome the limitation period the Applicant has tactfully chosen to proceed by seeking a revision of the award from the High Court. Court cannot entertain such unprofessional procedure. Therefore this application is dismissed with costs.

Hon. Mr. Justice Lameck N. Mukasa

Judge

20th 12/ 2007