

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION
HCT-00-CC-MA-514/2008

AYA INVESTMENTS (U) LTD ::::::::::::::::::::::::::::::::::: APPLICANT

VS

MUGOYA CONSTRUCTION & ENGINEERING (U) LTD:::::RESPONDENT

BEFORE: JUSTICE ANUP SINGH CHOUDRY

R U L I N G

This is an Application brought under Notice of Motion under Order 9 Rule 23 and Order 52 Rule 1 & 3 of the CPR and Section 98 of CPA and Section 33 of Judicature Act.

The Applicants have made an application for the Court that the order made on 22nd September be set aside and that a day be appointed for proceedings with respect to Miscellaneous Application No. 210 of 2008.

The grounds stated in support of the Application are:

- (a)** That the Counsel for the Applicant was prevented from attending court by sufficient cause, that Counsel for the Applicant made a reasonable effort to ensure that the Application was represented by Counsel at the hearing,

- (b)** That Application No. 210 seeks to set aside an Arbitration award requiring the Applicant herein to pay substantial amount of monies.

When this Application came to the court on the 22nd September, the court made an order set it aside and the application was to set aside, in whole and the court to substitute its own award from the grounds of impartiality. The Applicants were challenging the award of Stephen Musisi on 26th March 2008 on the grounds that the Tribunal was not impartial.

On 22nd September the court looked at the application in the absence of the Applicants or their representatives and took the view that the court could not re-evaluate matters which had already been considered by the Arbitrator as matters of fact. The Applicants at the hearing of 22nd September did not help the court by not turning up and secondly, they did not demonstrate the basis on which the court could re-open the Arbitration matter.

Counsel for the Respondent Ronald Oine made an application for Applicant's summons to be set aside or for an order of prosecution under Order 9 Rule 22 of CPR as disclosing no grounds or merits and further that the Applicants did not show any seriousness in this matter as the Applicantbe struck off in their absence. It was reinstated and it has come to the court, he came to the court when they were not present.

In view of the history of the matter and in view of the Arbitration award, the court is not satisfied that the Applicants have shown good reasons for not turning up or for not prosecuting the days and therefore this court will not act as an Insurance cover to help the Applicants.

It is true that the Applicant may have suffered loss he is entitled to look to that loss to legal representatives and not seek the assistance of the court to remedy a breach which has already taken place namely: duty of care by their Lawyers to their client.

As stated on 29th September, no seriousness was shown in dealing with the Applicant's case and in those circumstances, the Applicant's case; application today is dismissed with costs.

Anup Singh Choudry
Judge

27/10/2008