THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA

AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS CAUSE NO 15 OF 2013

IN THE MATTER OF A REFERENCE TO ARBITRATION

IN THE MATTER OF AN APPLICATION FOR AN INTERIM MEASURE OF PROTECTION UNDER THE ARBITRATION AND CONCILIATION ACT CAP 4

1. **JOHN SEKAZIGA }**
2. **LUKE ANGUYO }.....APPLICANTS**

VS

CHURCH COMMISSIONERS HOLDING COMPANY LTD} .....RESPONDENTS

BEFORE HONOURABLE MR JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Applicant commenced this application under the provisions of section 6 of the Arbitration and Conciliation Act, rule 13 of the Arbitration Rules, section 98 of the Civil Procedure Act, article 126 (2) and 139 of the Constitution of the Republic of Uganda and section 33 of the Judicature Act. It is for orders that the court be pleased to grant an interim measure of protection by way of a temporary injunction restraining the Respondent from terminating the Consultancy Contract executed between the Applicant and the Respondent dated 10th of February 2011 and from enforcing, effecting or otherwise implementing the purported notice letter of termination dated 22nd of May 2013 and for suspension of the letter until the hearing and determination of the arbitration. The Applicant further prays for an order of a temporary injunction restraining the Respondent from appointing or entering into any other Consultancy Contract with any third-party in respect of the services envisaged the said Consultancy Contract, the subject matter of the application until the hearing and determination of the arbitration. Finally the Applicant prays that costs of the application are provided for.

The grounds of the application are that the Applicant duly entered into a contract for the provision of inter alia consultancy services, architectural design and supervision services dated 10th of February 2011 with the Respondent. The Applicant duly performed his services in an impeccable, honest and diligent manner. The Respondent purported to issue a notice of termination of the consultancy contract based on unknown circumstances for convenience. The

termination of the consultancy contract for unclear and ambiguous circumstances is unfair, prejudicial and a breach on the part of the Respondent. It is just and fair and equitable that the injunction is granted to preserve the status quo and protect the Applicant's interest until the disposal of the arbitration or until such further orders of the arbitrator. Finally that the Applicant will suffer irreparable loss if an injunction is not granted as the Respondents are seeking to terminate the contract without complying with the terms of the consultancy contract or its exit terms.

The application is further supported by the affidavit of Architect John W. Sekaziga sworn to on the 19th of June 2013. It transpired that the facts are not in dispute. The first Applicant is the Principal Partner in the architectural firm of Messieurs Design Group and Associates. On 12 March 1975 the Respondent appointed the Applicant to carry out designs, tender process and supervision of the proposed Church House Project. Thereafter tender bids were sent out and opened several times respectively on 21st of March, 1979, 15th of April 1980 and 24th of March 2003. Construction however did not commence due to lack of funding. In August 2009, the Respondent resumed the project and give instructions to the Applicant to prepare inter alia, architectural designs, details and specifications; structural/civil layouts, details, bar bending schedules and specifications; electrical and mechanical layouts, specification and bills of quantities; bills of quantities (civil), preliminaries, general and technical specifications. All documentation was completed and tender documents were sent out for tendering and bidders and returned the bids on 6 May 2010. The Applicant duly carried out analysis of both the civil and electrical mechanical works and the analysis and recommendations were submitted to the Respondent. On 5 October 2010 the Respondent's board of directors awarded the contract for the construction of Church House to Messieurs Cementers Uganda Ltd for a contract period of 78 weeks. The Applicant satisfactorily carried out the Respondent’s instructions and rendered services to the satisfaction of the Respondent.

On 10 February 2011, the Applicant and the Respondent duly entered into a contract for consultancy services in respect of the Church House Project. The contract captured the previous relationship between the parties and governs the present relationship between the parties. The Applicant avers that it carried out and performed the functions and duties under the Consultancy Services Contract and governing construction contracts honestly, professionally, diligently, impeccably and without reproach and has as a result of the professional actions, ensured substantial supervision and financial savings to the benefit of the Respondent. Subsequently the Respondent issued a notice to terminate the Consultancy Services Contract. The notice seeks to terminate the consultancy services contract on the basis of: "*current circumstances surrounding the project and for convenience*". The Applicant sought clarification in writing from the Respondent on the alleged "current circumstances" but has received no information or response from the Respondent. The Applicant contends that notice of termination stipulated under the consultancy services contract for whatever reason must be based on the principles governing construction consultancy services contracts and agreements. However, the purported notice of

termination was based on ambiguous, unclear, unsubstantiated and unknown circumstances and is unfair and prejudicial to the Applicant and a breach on the part of the Respondent. The Applicant contends that his firm of architects is well known with a proven track record and they have worked on the Church House Project for the Respondent for close to 40 years with no blemish or dirt on their reputation and integrity. The Church house Project is a dear project to the Applicants on account of the time efforts and concessions the Applicant has put into the project. The actions of the Respondent will have the effect of blighting the reputation of the Applicant for unclear and ambiguous circumstances. The Applicants have always performed their duties and are able and willing to perform and complete them as envisaged in the Construction Services Contract until handover of the Church House.

The Applicant avers that without prejudice that the Respondents purported notice of termination does not take into consideration the requirements for notice of termination of the contract. The Applicant is dissatisfied with the manner in which the Respondent purported to give notice of termination in clear and ambiguous circumstances of termination that is not convenient to the Church House Project. The Applicant commenced arbitration proceedings under clause 6.18 in respect of the notice of termination. The Applicant will suffer irreparable injury to its reputation and costs if the termination proceeds fully. The arbitration proceedings would be rendered nugatory if the termination is permitted to proceed. The Respondent will suffer no injury as the Church House Project has presently stalled. The contractor's contract expired and no works are currently ongoing on the site. Finally the Applicant has a good and valid claim in the arbitration.

The Respondent opposed the application and the grounds thereof are contained in the affidavit in reply. The affidavit in reply is sworn by Eng Hillary Obonyo, Chairman of the Board of Directors of the Church Commissioners Holding Company Ltd and does not substantially contest questions of fact. He primarily avers that whether or not the Applicant rendered its services to the satisfaction of the Respondent is within the knowledge and determination of the Respondent. The termination was however not based on fault but convenience and avers that he refrained from commenting on the satisfaction of the Applicant services in the affidavit. The Respondent agrees that it issued a notice of termination of the contract for provision of consultancy services on the Church House Project for convenience. The contract between the parties provides for termination for convenience under clause 6.4.3. The Applicant is deemed to know the current circumstances surrounding the project to the extent that the Applicant knows that construction activity has not taken place for about four months. It was not the first time work on the project has been abandoned. The Applicant is aware that notice of termination was not based on principle but on provisions of the contract permitting the issuance of the termination notice. It provides for termination for convenience and the consequences of such termination. Termination for convenience is a discretionary remedy open to the Respondent to terminate the contract on a no-fault basis. The termination was without prejudice to the Applicant as the Respondent is ready and willing to pay to the Applicant all his official fees in accordance with the terms of the contract under clause 6.4.4. On the 4th of June 2013 the Respondent wrote to the Applicant

requesting him to submit the fees payable in accordance with the provisions of the contract. The clause provides for the amounts payable upon termination. The response of the Applicant to the letter was about the form the payment was to take and there was no response to the request.

The church project is equally dear to 11,000,000 Anglican Christians who wish to see the project completed and the board is entrusted with the task to ensure that the project is completed in a timely manner. The decision was taken in the best interest of the Church House Project, to avoid public outcry. In any case the contract, the subject matter of the consultancy services, was drawn up by the Applicant himself and enforcement of the clause to terminate for convenience was not a breach by the Respondent. The clause to terminate for convenience was not based on fault. The Applicant is free to proceed to arbitration but that should not lead to the continued stoppage of the project. There would be no irreparable injury to the Applicant's reputation and costs because the Respondent has terminated the contract in accordance with its terms and the Respondent is willing to pay the Applicant's fees accrued and outstanding up to the time of termination of the contract. Whatever the Applicant may suffer may be atoned for by an award of damages.

Paragraph 26 of the Applicant's affidavit demonstrates that the Applicant wants the current state of affairs to remain with no works on the Church House contrary to the interests of the Christians of the Anglican faith and the Board of Directors of the Respondent entrusted with the completion of the project. The Board of Directors would like to have the Church House completed. The Respondent will suffer irreparable injury because funds that are constructing the Church House are borrowed funds from Equity Bank Uganda and Kenya with the plot on which the Church house is built as the security for the loan. Under the business plan for the project, projected rent from the Church house is meant to repay the loan. The project is well behind schedule as it ought to have been completed in 2012 and income from the project should have started paying the loan upon completion. But one year later, this has not materialised and a new project date was set by the board and advised to the Applicant among other persons. The loans continue to attract interest even as work is not going on at the project site. In the circumstances any delays by stopping the project will lead to irreparable loss by the Respondent when the bank forecloses the mortgage and the Respondent loses the project. On the other hand loss occasioned to the Applicant is the loss of his professional fees which the Respondent is ready and willing to pay in accordance with the contract terms. Even if the arbitration determined in favour of the Applicant, the remedy of the Applicant would be damages which is monetary in nature. In the circumstances, the Respondent in issuing the notice to terminate has not acted in bad faith or abused its discretion and accordingly the Applicant's application should be denied.

In rejoinder Architect John Sekaziga, the deponent in support of the application reiterated previous averments in the affidavit and made some additional averments. He avers that it is not the Applicant's intention and has never been the Applicant's intention for close to 40 years the Applicant has worked with the Church house project to stop, frustrate or stall the project. The Applicant was dedicated to having the church project completed as designed. The Respondents attempt to terminate the consultancy contract for the reasons and circumstances that are not

clarified, unknown, unspecified and unclear amount to bad faith. The termination for convenience and on the basis of no-fault is improper and inapplicable in the circumstances because the Respondent has inferred circumstances that include fault or bad faith on the part of the Applicant. The Applicant is aware that the Church house Project stalled on account of the fact that the contractor suspended works and thereafter the contract expired. The Applicant, never having received a response to its letter dated 24th of May 2013 is not aware of and has not been advised how the facts amounts to circumstances applicable to the Applicant. The Applicant never abandoned the project and at all material times demanded and insisted that the contractor performs its works. The Applicant complied with the terms of the consultancy contract but has not been paid according to the strict terms of the contract. The Applicant further avers that he would be greatly prejudiced because the termination has imputed unknown, unclear, ambiguous and unexplained/and not clarified circumstances which would damage or dent his reputation built over several years. The Applicant runs the risk of being blacklisted by Equity Bank Uganda and Equity Bank Kenya because of his lead contribution and participation in the Church House Project. Absence of any indemnity undertakings from the Respondent for any future damage or short coming to the Church House Project which the Applicant has supervised close to 80% completion and possibly arising after the Applicant's services have been terminated. The Applicant stands risk of general public ridicule and loss of reputation. The Applicant is interested in the protection of his reputation and name based over several years as to become a household name in architectural circles and the loss of reputation cannot be adequately atoned for by an award of damages. The Applicant fees payable has not been paid under the strict terms of the consultancy contract. The termination of the Applicant's services for unclear and ambiguous circumstances is not in the interests of the Church House Project. The reason for the stalled works in the main contract is failure to comply with its contractual obligations and previous delays by the Respondent in making payments to the contractor. It is not the Applicant's intention to stop the project and the presence of the Applicant would not mean that the project would be stopped.

At the hearing of the application, the Applicant was represented by Noah Mwesigwa of Messrs Shonubi Musoke and Co Advocates while the Respondent was represented by Barnabas Tumusingize of Messrs Sebalu and Lule Advocates. Counsels filed written submissions in support of the respective cases.

Submissions of the Applicants Counsel in support of the Application

The Applicants Counsel relied on the provisions of section 6 of the Arbitration and Conciliation Act for the submission that it permits the Applicant to bring an application of the nature summarised above where the Applicant is a party to an arbitration agreement. An arbitration agreement as defined by the Act as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. Counsel submitted that clause 6.17 and 6.18 of the consultancy contract between the Applicant and the Respondent provides for reference to

arbitration and is within the scope of the definition of an arbitration agreement. It permits the Applicant to bring the application before the commencement of arbitration proceedings. Section 6 permits an application for an interim measure of protection to be brought before or during arbitration proceedings and the Applicant had already taken several essential steps to commence the arbitration. Counsel relied on the case of **International Investment House LLC and Another versus Amos Nzeyi and others miscellaneous cause number 11 of 2012** where this court considered section 6 of the Arbitration and Conciliation Act for the proposition that the section was wider in scope than its permission to permit an application for an injunction. Counsel submitted that whereas the remedy of a temporary injunction is an equitable remedy, section 6 (1) of the Arbitration and Conciliation Act gives it a statutory foundation. Secondly the object of a temporary injunction is to maintain the status quo and to ensure that the Applicant's proceedings before an arbitral tribunal are not rendered nugatory. In the case of **International Investment House LLC** (supra) the court agreed that the principles applicable in applications for temporary injunctions as have been applied by the courts are relevant. The principles are that the Applicant must establish a prima facie case with a probability of success, that the Applicant would suffer irreparable injury which may not be adequately compensated for by an award of damages and lastly if the court is in doubt, the application will be decided on the balance of convenience.

As to what amounts to a prima facie case with a probability of success, this court observed in the case of **International Investment House LLC** (supra) and following the decision of the House of Lords in **American Cyanamid Company Ltd versus Ethicon [1975] 1 All ER at page 504** and with reference to the holding of Lord Diplock that all the Applicant needs to show in the action is that there are serious questions to be tried and that the action is not frivolous or vexatious. Consequently it is sufficient to show that there was an arguable case which merit judicial consideration based on the inconclusive and uncontested nature of affidavit evidence and a procedural requirement to wait for the final resolution of questions of fact upon which the suit will be finally resolved. The Applicants Counsel submitted that the Applicant has raised arguable points and therefore has a prima facie case with a probability of success.

The gist of the arguable case is that the Applicant entered into a consultancy contract with the Respondent. The contract lays down the terms and duties of the Applicant and the Respondent. The Applicants duly performed their services diligently and properly as consultants on the Church House Project and this has not been expressly disputed by the Respondent. In a letter dated the 22nd of May 2013, the Respondent purported to terminate the consultancy contract on the ground that the Board of Directors of the Respondent considered the current circumstances surrounding the project and decided to terminate the services in accordance with section 6.4 and particularly clause 6.4.3 of the contract for convenience. The Applicant's contention is that the termination letter is confusing, unclear, ambiguous and wrong. Clause 6.4.3 provides that the client may also terminate the agreement for his convenience or if any other condition arises which interferes or threatens to interfere with the successful completion or supervision or the

accomplishment of the purposes thereof upon giving not less than 30 days written notice to the consultant. Counsel submitted that the clause simply means that the termination can only be for convenience or for the alternative reason but not for both. The termination letter purports to be a termination for convenience and accordingly on the basis of no-fault. The letter also provides that the Board of Directors had considered the current circumstances surrounding the project and decided to terminate the services of the Applicant. This provided a different ground under clause 6.4.3 apart from convenience. Consequently the termination notice is unclear, ambiguous, unfair and detrimental to the Applicant as a consultant on the project in respect of whom it is not clear under what circumstances his services were being terminated or the reasons for termination.

Counsel reasoned that the termination letter was akin to a letter of termination of employment by issuing a summary dismissal from misconduct at the same time offering to pay all dues, gratuity etc. Such termination would be deemed unlawful and unfair and a conflict with itself. Counsel submitted that the Applicant is being terminated simultaneously under two separate and distinct grounds without reason or adequate explanation for which the Applicant is entitled to treat the propriety or impropriety of the same as a dispute and refer it to arbitration. Upon the Applicant receiving the purported notice of termination, they wrote to the Respondent on the same date with an attempt to understand what was meant by the notice and particularly the term "current circumstances". The Respondent never replied. On 12 June 2013, the Applicant again wrote to the Respondent a letter seeking clarification about the meaning of "current circumstances" given the Respondents close to 40 years history on the project. The Respondent never replied to the letter as well. Upon the failure of the Respondent to clarify the termination letter, the Applicant invoked the arbitration clause and commenced arbitration proceedings. In those circumstances the Applicant has an arguable point as to the nature, propriety, correctness, clarity, ambiguity and confusing nature of the alleged termination.

The second arguable point forming a prima facie case is based on the second leg of the alleged termination. It is on the ground that the termination was purportedly based on convenience on a no-fault basis. The Respondent's depositions show an inaccurate understanding of the legal principle of termination for convenience. The Respondent in the affidavit in reply through Mr Hillary Obonyo avers that the termination was on a no-fault basis. First of all that is a conflict in the termination letter as to what ground it is based on that is whether on the ground of convenience or any other condition which is to interferes with or threatens to interfere with the successful carrying out of the supervision or accomplishment of the project. The concept of termination for convenience is a peculiar concept that relates to construction contracts and has its foundation in contracts with governments before the principle was extended to private contracts. The concept has not received any judicial interpretation and consequently Counsel relied on a decision of the Court of Appeal of Maryland, circuit court of Baltimore City in the case of Questar Builders Inc versus CB Flooring LLC case number 03 –C - 003688. The gist of the decision is the termination for convenience rights may be enforceable subject to the implied limitation that they are exercised in good faith and in accordance with fair dealing. If it is

economically not feasible to continue with the project, the owner may be allowed to terminate it and to compensate the general contractor. In the construction contracts, termination for "convenience" implies a broad spectrum of circumstances, such as the termination must be done in good faith, or the owner may have broader liability than the contract provisions contemplate. Furthermore the court held that the principle of good faith and fair dealing implies that the party exercising the discretion to terminate for convenience, must refrain from doing anything that will have the effect of frustrating the right of the other party to receive the fruits of the contract between them. Each party must do nothing to destroy the rights of the other party to enjoy the fruits of the contract and to do everything that the contract presupposes they will do to accomplish its purpose.

It is the Applicant's case that the acts of the Respondent to terminate the contract due to "current circumstances" remain unclear, unsubstantiated, ambiguous, and not clarified, unknown and not verified and amounts to bad faith. Moreover the Respondent has offered no explanation thereby offending the principles of natural justice and therefore connoting bad faith and a desire to deny the Applicant the fruits of the contract spanning close to 40 years. Moreover in the affidavit in response, the Respondent has insinuated that the retention of the Applicant will result in the ridicule and affect the rights of the Christians and offend principles underlying termination for convenience. The courts have held that where a broader liability falls due where there has been bad faith then a party may be entitled to claim a breach of contract and sue for remedies available including that of specific performance. The Respondent has not indicated anywhere that it is not economically feasible to continue with the project for purposes of termination of the contract for convenience under clause 6.4.3. This raises another arguable case and hence the Applicant has a prima facie case.

Additional to the right to claim for specific performance, the response of the Applicant in a letter dated 22nd of May 2013 to the termination letter provided for the funds due to the Applicant. The sums due to the Applicant are also specified in the addendum to the consultancy contract annexure "A" to the affidavits in support and the Respondent is in breach of the contract for terminating without making good on the provisions for payment under clauses 6.4.4 and 6.9.2 and also 6.11 .2.

On the maintenance of the status quo, Counsel submitted that the status quo is that the Applicant is still the Project Architect, Supervisor and Consultant for the Church House Project and the consultancy contract. No other consultant had been appointed to carry out the duties under the consultancy contract. The Church House Project has currently stalled and no construction is going on. The contractor’s contract was for a period of 78 weeks which expired.

As far as irreparable loss which may not be adequately compensated for by an award of damages is concerned, Counsel relied on the case of **Kiyimba Kaggwa versus Katende [1985] HCB at page 43** for the definition of what amounts to irreparable injury. Irreparable injury means substantial injury or material injury that cannot be adequately compensated for in damages. The

Applicant commenced work as far back as 1975 that is about 40 years ago and has acted as the lead architect. Through this provision of the works, about 80% of the project has been accomplished. It is public knowledge that the architect/Applicant is the principal architect on the church house project. Furthermore the Applicant's firm is a reputable firm and its image is likely to suffer due to termination for unknown, unclear, ambiguous, unexplained, and unclarified circumstances. The project is a public project known to over 11 million Christians and determination will have the effect of blighting the Applicant's repetition. The Applicants are professionals and like advocates depend on their reputation and name and any dent in the reputation or name has dire and long-standing implications which no measure of monetary payment can atone for. Relying on the case of **Performance Unlimited Incorporated versus Questar Publishers Inc, United States Appeals, sixth circuit court number 95 – 6271,** it was held that the type of irreparable harm the Applicant was likely to suffer was the loss of business and it is the kind of harm which necessitates the granting of preliminary injunctive relief pending arbitration because the arbitration will be rendered meaningless or hollow unless the status quo is preserved pending arbitration. An exception exists where the potential economic loss was so great as to threaten the existence of the Applicants business.

On the other hand, the Respondent would not suffer any irreparable harm. This is because according to the affidavit of Hillary Obonyo, there is a bank loan which is to be repaid with interest. The loan has a grace period of three years. No evidence has been provided to guide the court in any way or to indicate any dire circumstances to the project. There is no indication that an interim measure of protection will frustrate or stall the project. There is no evidence that works are about to be resumed or that another contractor has been appointed as a result of which an interim measure of protection would jeopardise the project. The evidence is that the Applicant insists on the project continuing and directing the contractor not to suspend the works.

Finally Counsel submitted that the balance of convenience favours the Applicant. This is because the Applicant has been the project architect, supervisor and consultant for almost 40 years and nurtured the completion of the building up to 80%. Granting an interim measure of protection by suspending the termination notice will not prejudice the Respondent or the project. The Respondent does not indicate that the Applicant is incapable of completing the functions in the consultancy contract and has not disputed the fact that the Applicant performed its duties diligently and satisfactorily. The Applicant has saved the Respondent US$3,304,292.88, a fact which has not been disputed by the Respondent. Consequently there is no better person than the Applicant who can oversee the project. Finally there is no activity currently going on in relation to the project.

Submission of the Respondent's Counsel in opposition to the application

In reply, the Respondent's Counsel submitted that as far as the consultancy agreement is concerned, it was initiated and drafted by the Applicant. The agreement did not envisage or provide that the consultancy services will be provided for, for the duration of the contract

without termination but rather that the Respondent or Applicant could terminate the same in accordance with its provisions. The agreement provides for the termination by either party under clauses 6.4 and 6.5. The Respondent was exercising a right conferred by the contract. Clause 6.31 of the contract envisages a scenario where the consultancy appointment terminates upon completion of the project subject to the Respondents right to terminate under clause 6.4 and 6.5.

Counsel submitted that the Respondent exercised its discretion under the provisions of clause 6.4.3 of the agreement and terminated the agreement for its own convenience. The agreement does not elaborate on the circumstances under which the agreement may be terminated for the Respondent's convenience. The Respondent has the option to terminate the agreement for convenience and no such right is given to the Applicant under the same agreement. Counsel contended that the dispute between the parties is not about the right of the Respondent to terminate the contract but rather on the wording used in the notice of termination.

The Respondents Counsel submitted that section 6 of the Arbitration and Conciliation Act, gives the court discretionary powers in the grant of an interim measure of protection. This is supported by the case of **International Investment House LLC** (supra).

Furthermore Counsel agreed that considerations for the grant of a temporary injunction apply with equal measure in for an interim measure of protection. This was held in the case of **Pan African Impex Versus Barclays Bank Plc and Another** where honourable Justice Egonda-Ntende held that in considering an application under section 6 (1) of the Arbitration and Conciliation Act, the necessary prerequisites for the grant of an interim remedy should be available before the order can issue. The prerequisites include a finding that there are serious questions to be tried or that the Applicant stands to suffer irreparable loss should the injunction not be granted and in case the court is in doubt the matter can be resolved on the balance of convenience.

As far as a prima facie case is concerned, Counsel contended that because the Applicant has provided no statement of claim, the court has nothing to look at to determine whether there was a prima facie case or not and there is no guarantee that such a case would be commenced. Because they are not pleadings before the court, there is no basis for the court to determine whether the Applicant has a prima facie case.

Without prejudice the Respondent’s Counsel submitted that the Respondent's case is that it exercised a right to terminate the contract under clause 6.4.3. The Applicant does not contest the right of the Respondent to terminate for convenience but rather that the letter is confusing, unclear and ambiguous. The complaint is specifically about using of the word "under the circumstances surrounding the project" that made it ambiguous, unclear and confusing. Counsel contended that there would have been no dispute had the Respondent simply written that "the contract is hereby terminated for the client's convenience". He agreed that for determination for convenience to be valid, it should be done in good faith and discretion exercised for ordinary

business purposes are not in abuse of the discretion. Counsel submitted that the circumstances informing the discretion to terminate for convenience should be examined. It is however not a requirement to indicate the nature of the circumstances. The analogy of an employee terminating the contract of employment submitted on by the Applicant in the submissions was not relevant and should be disregarded by the court. Counsel submitted that there were no two separate and distinct grounds for termination and the Respondent's case is that the termination was for convenience. The Applicant was aware of the circumstances surrounding the project and there was nothing ambiguous or confusing in the termination letter which would require an interim measure of protection. The Applicant was simply trying to create a case for an interim measure of protection. If there was any ambiguity, it was in the contract drawn by the Applicant and the application therefore should be determined in the Respondents favour.

Counsel agreed with the holding **Questar Builders versus CB Flooring LLC** (supra) and submitted that examples of bad faith referred to in that decision included termination of the contract for convenience simply to get a better bargain from another source. Bad faith includes entering into a contract with no intention to see it to the end. In the Applicant's case, none of the ingredients of bad faith have been established. In that case there was a presumption that the government acted in good faith and Counsel prayed that the court extends the good faith presumption to the church. In any case it has not been demonstrated that the Respondent acted in bad faith.

As far as the prayer for clarification by the Applicant was concerned, there is no requirement to give reasons for termination for convenience. The termination process had already commenced and there was no need since the Applicant had the knowledge about the facts.

Counsel submitted that the Applicant's case did not show a proper case for the claim of specific performance. This is because the Respondent was not in breach for terminating without making good on the provisions for payment. The amount involved for payment of the Applicant as provided for in clause 6.4.4 and was within the knowledge of the Applicant. Secondly, clause 6.9.2 requires the Applicant to submit the final claim for services performed. Clause 6.1 1.2 requires payment to be made within 30 days of the submission of accounts. The Applicant has not demonstrated that he complied with the provisions and the Respondent refused to pay. When the Applicant responded on 5 June 2013, he did not provide the requisite details for the Respondent to process payments.

Respondents Counsel submitted that the circumstances under which in turn measures which are also referred to as provisional measures should be granted was considered by the **International Centre for Settlement of Investment Disputes** in the matter between **Occidental Petroleum Corporation** and the **Republic of Ecuador ICCID case No. ARB 06/11**. In that case they held that provisional measures should be granted in situations of necessity and urgency in order to protect rights that could, absent such measures be lost. Secondly to protect rights whose existence might be jeopardised in the absence of such measures. An order for provisional

measures will only be made where such measures are found to be necessary and urgent in order to avoid imminent and irreparable harm. Lastly provisional measures may not be awarded for protection of the rights of one party where such provisional measures would cause irreparable harm to the rights of the other party.

The Applicant cannot bring itself within the ambit of the first three conditions because there are no rights that would be lost if the interim measures are not granted. A claim for breach of contract lies in damages and the rest can be protected without interim measures. On the other hand the Respondent has demonstrated that the grant of an interim measure of protection will cause irreparable harm to the Respondent because the construction works stalled, and the building will not be completed in time leading to failure to earn rental income so as to offset the Respondent's loan obligations. The can be no case before the arbitral tribunal which warrants an interim measure of protection.

As far as the status quo is concerned, the status quo is that the project has stalled and no construction is going on. That is what the Applicant wants to continue. The Respondent has indicated a desire for the building works to come back on course. Maintenance of the status quo can only cause injustice to Respondent under the circumstances of the case.

As far as irreparable injury is concerned, the contract makes provision for the payment of damages where there is termination for convenience. Consequently the parties are in agreement as to the amount of money the Applicant would be entitled to in the event of such termination. It is a liquidated and quantified damage for which a grant of an interim measure of protection by way of an injunction is not the appropriate remedy. Secondly, the contract makes provision as to what remedies would have been in the event of termination. Thirdly the contract did not envisage that it would be terminated under any circumstances. Had the parties wanted it to be so, they would have stated so unequivocally in the contract. Fourthly, in the event the arbitral tribunal finds that the Respondent is in breach of any clause of the agreement, the appropriate remedy would be damages. The Applicant has not demonstrated how the language used tarnished their reputation. The Respondent has not used any language that tarnishes or portrays the Applicant in a bad light. The project can only proceed on the basis of mutual trust, Corporation and collegiality between the Applicant and the Respondent. The Respondent has exercised its discretion to terminate the Applicant's contract and the Applicant cannot insist on continuing on the project where the Respondent feels that he should not.

Counsel agreed with the analogy that advocates depend on their reputation. However he submitted that by the same token, where the client expresses a desire that an advocate should not continue handling his case, the advocate cannot insist that he wants to continue in the circumstances. There is no loss which cannot be atoned for by an award of damages suffered by the Applicant. The Respondent is ready to have the construction resumed and accordingly an order maintaining the status quo would in the opinion of the Respondent have the effect of stopping the project.

With reference to the case of **Performance Unlimited Inc versus Questar Publishers Inc** (supra), the Applicants Counsel relied on a quotation which was a submission of the Applicant and not the holding of the court. Potential loss that threatens a business has to be seen in the context of the examples given i.e. the threat of bankruptcy. The Applicant has not demonstrated that upon termination, its business will collapse. In the case of **Performance Unlimited Inc** (supra), the situation was that if the interim order was not issued, the Applicant would have gone out of business. The same cannot be said of the Applicant. According to Lord Diplock in **American Cyanamid** (supra), the court should not only look at whether damages are an adequate remedy but the court should further consider if on the other hand the defendant would be adequately compensated for in damages in the event that he wins. The Respondent was likely to lose the building through foreclosure and damages would not be an adequate remedy. Finally Counsel submitted that the Applicant has not demonstrated that its business would face destruction without injunctive relief. On the contrary termination entitles the Applicant to all the money accrued including 10% mark-up of all work not yet done which the Respondent is willing to pay.

On the balance of convenience, the Respondents Counsel relied on the fact that the project borrowed funds from Equity Bank. Interest on the loan and the principle in the current year is US$846,000. The project was set up on the assumption that rent from the building would go towards the repayment of the loan. The Respondent is continuing to service the loan when the building has stalled. The Respondent has indicated a willingness to pay the Applicant what is owed on the project in accordance with the terms of the agreement. The injunction is likely to interfere with the resumption of construction work. Furthermore the Respondent has not alleged that the Applicant was at fault when it terminated the services for convenience. Saving the Respondents money is part and parcel of the Applicant's duties among other things. The fact that there are no activities on the project is because an interim order had been granted restraining the Respondent from continuing with the project. Finally Counsel reiterated submissions that the Respondent had exercised the discretion to terminate for convenience. Counsel prayed that the application is dismissed with costs to the Respondent.

Ruling of Court

I have carefully considered the protracted arguments of Counsel, the pleadings and affidavits evidence of the parties. Both Counsels agree that principles for grant of temporary injunctions also apply in this case and there is no need to elaborate on the principles for the moment.

The first issue is whether the application discloses a prima facie case or an arguable case?

There are two basic grounds upon which the Applicant argues that there is a prima facie case with a probability of success. I agree with the previous authorities cited and particularly the case of **American Cyanamid versus Ethicon** (supra) for the proposition that all that the Applicant needs to demonstrate in such an application for a temporary injunction is that he has an arguable

case. At this stage the court should not conclusively determine questions of fact or law which form the basic subject matter of the controversy or dispute between the parties.

Where the matter is going for arbitration, it is doubtful whether such a case can only be discerned from the pleadings as submitted on behalf of the Respondent. The Respondent's Counsel submitted that in the absence of a statement of claim or a plaint, the court has no basis to determine whether the Applicant has a prima facie case or arguable case.

I do not agree with the submission that a statement of claim or the plaint is necessary to determine whether the Applicant has a prima facie case or an arguable case. This application was made under the provisions of section 6 of the Arbitration and Conciliation Act cap 4 laws of Uganda. This section expressly provides that a party to an arbitration agreement may apply to the court before or during arbitral proceedings for an interim measure of protection and the court may grant that measure. Where the application is made before commencement of the arbitral proceedings, there obviously would be no statement of claim. Secondly the section presupposes arbitral proceedings and not a civil suit. Consequently what the Applicant needs to prove is that there is an arbitration agreement, and that the dispute is a dispute contemplated within the arbitration clause which would be the subject matter of the arbitration proceedings. In the case of **International House Investment** LLC (supra), I observed that a prima facie case in the context of an application for an interim measure of protection includes establishing in court that there is an arbitration agreement, and that the dispute is a dispute contemplated for resolution through arbitration in the arbitration agreement. Secondly considerations for the grant of a temporary injunction are relevant. Those considerations are not in dispute by the parties. They are that the Applicant has an arguable case or a prima facie case that merit consideration by the arbitral tribunal or the court whichever is the adjudicator. Secondly, the Applicant would otherwise suffer irreparable injury which cannot be atoned for by an award of damages. Thirdly in case the court is in doubt, the case would be decided on the balance of convenience.

In establishing whether that is a prima facie case, the court can only rely on the affidavit evidence which in any case is the basis for reaching a decision as to whether there is an arguable case that would be presented or has been presented before the arbitral tribunal.

In the circumstances of this case, the Applicant has specifically averred in the affidavit of the first Applicant in support of the application that they have commenced arbitral proceedings under the provisions of clause 6.18 upon receiving a letter of termination of the contract. Annexure "D" is a letter dated 18th of June 2013 in which the Applicant invokes the provisions of clause 6.18 of the consultancy contract and proposing the Chairman for the time being of the East African Institute of Architects as the arbitrator. Clause 6.18.1 of the consultancy agreement provides that in case if settlement cannot be reached, the dispute should be referred to an arbitral tribunal to be constituted in accordance with subsequent provisions. Either party was to appoint an arbitrator and notify the other party or both arbitrators so appointed shall appoint a

chairperson or the third arbitrator. In case the procedure failed, an application may be made to the Chief Justice of Uganda to appoint a person fill the position of the chairperson.

The Applicants grievance arose as a consequence of the letter dated 22nd of May 2013 written by Engineer Hillary Obonyo, the Chairman, Board of Directors of the Respondent and addressed to Design Group and Associates by which he wrote as follows:

> *"The Board of Directors has considered the current circumstances surrounding the project and has decided to terminate your services in accordance with section 6.4 and specifically clause 6.4.3 of the contract for convenience.*
>
> *This is therefore to serve you with 30 days notice of intention to terminate your services in accordance with the provisions of the contract. This contract shall stand terminated upon the expiry of 30 days from the date of receipt hereof with no further notice to you.*
>
> *You are required under section 6.4 and clause 6.4.4 of the contract to present an invoice for services rendered as far for purposes of determining the works are supervised to date for consideration and eventual payment by Church Commissioners Holding Company Ltd."*

In a letter dated 24th of May 2013 and received on the 24th of May 2013 by the Respondent, the Applicant replied the notice and wrote to the Chairman of the Board of Directors of the Respondent. They gave a background to what they understood as the cause of the problem and also indicated that they were consulting their lawyers and would give a full response to the letter as soon as possible. Again on 12 June 2013, they indicated that they had not received a reply to the letter of 24th of May 2013. They wrote that it would be fair and just if there were informed of the reasons and circumstances which led to the decision of the Respondent to terminate the services. Finally on 18 June 2013, the Applicants gave notice of appointment of an arbitrator under the provisions of clause 6.18 of the Consultancy Contract. In the first letter they indicated that they would consult their lawyers about the legal interpretation of clause 6.4.3 of the consultancy contract. It is clear that the Applicants were aggrieved by the letter of the Chairperson Board of Directors of the Respondent, giving notice of termination of their services for convenience. Clause 6.4.3 provides that:

> *"The Client may also terminate this agreement for his convenience or if any other condition arises which interferes or threatens to interfere with a successful carrying out of the supervision or the accomplishment of the purpose thereof upon giving not less than 30 days written notice to the consultant."*

Clause 6.4.3 envisages the giving of notice of termination for convenience. The notice is 30 days written notice. Upon termination, the consultant would be entitled to payment of a fair and reasonable amount of professional fees for the work and services rendered by the consultant up to the time of termination and any amounts due to the consultant under other clauses in the

agreement. They are entitled to a disruption charge equal to 10% of the difference between the sum of professional fees which would have been payable to the consultant if the agreement had not been terminated and the sum payable under such termination.

The Applicant submitted that the notice was unclear. In other words they are not sure whether it was a termination for convenience or any other reason. In response the Respondent submitted that it was a termination for convenience on a no-fault basis. Consequently the matter that may go to arbitration would revolve on the wording of the letter giving notice of termination. Clear logic would be that the Respondent clarifies on the letter. However, the consequences of termination for convenience are expressly provided for under section 6.4.4 of the Consultancy Contract. I have carefully considered the controversy and at this stage and as held in the case of **American Cyanamid versus Ethicon** (supra), the court should refrain from making prejudicial remarks on the final outcome. However, the court cannot restrain itself from pointing out that the remedy of the Applicant is to seek clarification on what the notice meant. The Applicant sought clarification by writing to the Respondent for clarification but got no reply. The notice of termination expressly quotes clause 6.4.3 and therefore purports to have been issued under that clause. The provisions of section or clause 6.4.3 are explicit enough. I further agree with the Respondents Counsel that clause 6.4.3 of the consultancy contract gives discretion to the Respondent to terminate the services for his convenience or any other condition which interferes or threatens to interfere with the successful carrying out of the supervision or the accomplishment of the purpose thereof. In other words, it can be terminated for convenience or for some other reason. In either case, it is a discretionary contractual power. So the question was whether that discretion had been contractually exercised. Whether it is terminated for any other reason or for convenience under clause 6.4.3, the consequences are the same. Because it is a prerogative of the Respondent, then the Applicant's case would be narrowed down to whether the exercise of that discretion was contractual. I will not make any further comments other than to say that it is apparent that there are other undercurrents in the dispute. This is evident from the assertion of the Applicant in the letter dated 24th of May 2013 giving the reasons for the stalling of the project and reasons for delays. Among other things, Cementers Ltd, being the contractors, contract expired on 28th of March 2013. What the court can say at this stage is that there seems to be in dispute about the termination of the contract under the provisions of clause 6.4.3 and the Applicant has commenced arbitration proceedings by appointing an arbitrator. Both Counsels agreed with the principle that where there has been a termination of the construction contract for convenience, it was necessary that the termination is made in good faith and for business convenience. The question was therefore whether in the circumstances of the case, there was good faith on the part of the Respondent or whether it was economically necessary and feasible to terminate for convenience. Counsels argued on whether there was good faith or whether it was necessary to terminate for convenience. The court cannot at this stage, resolve that dispute even on the basis of the American decisions on doctrine. To do so would amount to determine the main controversy in this dispute. I consequently refrain from making any further comments on whether the termination for convenience was in accordance with the principles enunciated in the

authorities submitted on by both Counsels. To do so would be to determine the controversy at this stage of making an application for an interim remedy. All the court needs to establish is whether there is an arguable case which merits consideration by the arbitral tribunal. It is upon the arbitral tribunal to establish whether the termination was in good faith and in accordance with the principles of fair dealing in the business. Consequently, I have only reviewed the principles as enunciated in the case of **Questar Builders Inc versus CB Flooring LLC, an appeal in the Court of Appeals of Maryland number 153.** The main controversy in that appeal can be discerned from the sub contractor's claim that the termination for convenience clause relied upon by Questar did not apply because under the circumstances, Questar acted in bad faith by invoking the clause after scheming to hire another company in its place. On the other hand Questar postulated that the sub contract clause gave it a right to terminate the agreement at its convenience. The court of appeal reviewed the history of application of clauses for termination for convenience. Most importantly the issue was framed as to "whether a termination for convenience clause" contained in a contract between private parties is enforceable. Similarly the Court of Appeal held that termination for convenience clauses may be enforceable, subject to an implied obligation to exercise the right to terminate in good faith and in accordance with fair dealing. The first point that should be made is that the Court of Appeal decided the case on the merits and not in an application for an interim remedy. The principles enunciated by the court are therefore on the merits of the dispute. Secondly, the court considered the circumstances to establish whether the clause was applicable or inapplicable. The Court of Appeal given the history of introduction of the clause in government contracts to terminate the contract for convenience, particularly whether the termination for convenience was justified by the exigencies and uncertainties of armed conflict, where the provision goods or services by the contract is no longer necessary. The principle was developed to limit a claim for lost profits by the contractor. The first test stipulated was to establish whether there were changed circumstances to justify termination for convenience. The second test was to establish whether the termination was in bad faith or an abuse of discretion. For instance it was established that the government cannot terminate the contract for convenience simply to get a better bargain from another source. To do so would be in bad faith or an abuse of discretion. The court of appeal noted that the termination for convenience clause history illuminated the purpose as a risk allocation tool. However with regard to private rights, the court of appeal noted that termination for convenience clauses did not give a near *carte – blanche* power to terminate contracts for convenience to the same degree as the power given governments. The court preferred the construction which would make the contract effective rather than one which will make it illusory or unenforceable. The Maryland law of contract implies an obligation to act in good faith and deal fairly with the other party or parties to a contract. The implied obligation governs the manner in which a party may exercise their discretion accorded it by the terms of the agreement to terminate the contract for convenience. Consequently a party with discretion is limited to exercising that discretion in good faith and in accordance with fair dealing.

A controversy involving "*a termination for convenience clause*" would invite the adjudicator to consider the circumstances surrounding the termination in order to establish whether it was terminated in good faith and in accordance with the principles of fair dealing.

On that basis, there is an arguable case as to whether the notice under clause 6.4.3 was contractual and in accordance with the principles to act in good faith and deal fairly with one another, especially in light of the fact that the Applicant is not at fault according to the Chairman Board of Directors. Was the termination for convenience made in good faith and in accordance with the principles of fair dealing? The arbitrator might be able to get into the actual controversy between the parties other than the peripheral issue of notice. Let the arbitrator decide on the matter.

On the second question as to whether the Applicant would suffer irreparable injury that cannot be atoned for by an award of damages, the Applicants case is based on a dent to its reputation as a reputable firm of Architects.

I will not go into the lengthy submissions of both parties. If the Applicant's reputation has been dented, the Respondent had replied that the Applicant was not at fault and the termination was for convenience only. However, it is evident that the Respondent is in the same breath arguing that the project would be prejudiced if the Applicant is retained by an interim order. Furthermore the Respondent has replied that the presence of the Applicant would be prejudicial and affecting other Christians. This assertion is inconsistent with the submission that the Respondent was not at fault. I have further taken note of the fact that Engineer Hillary Obongo refrained from commenting about satisfaction of the Respondent with the Applicants work. The Applicant is therefore concerned about the actual grounds, for termination of convenience as to whether it was done in good faith or on the basis of fair dealing. In establishing whether it was done in good faith or on the basis of fair dealing, the question of a dent or slight to the Applicant's reputation would be dealt with.

As to the reputation of the Applicants, there are some undercurrents that need to be sorted out by the arbitrator. It is not disputed that the Applicant has had 40 years or so at the helm of the project without any complaint by the Respondent. The Applicant is worried by the manner of termination. It is my humble opinion that the remedy of the Applicant is to be cleared particularly on the basis of the assertion of the chairman of the Respondent that the termination of their services is on no-fault basis. I agree with the Respondent that the Respondent has purported to terminate the services of the Applicant under clause 6.4.3 which is contractual and gives discretionary power on the Respondent to terminate the services for convenience. The subsequent clause 6.4.4 gives the consequences of termination on the ground of the Respondent's convenience. The parties subsequently decided to submit on whether the termination would lead to irreparable damage that cannot be atoned for by an award of damages. The Respondent dealt with the consequences of termination and submitted that damages were contractual and provided for and there would be no need for an injunction as damages would be an adequate remedy. The

problem with the analysis is that the termination is not effective until after the expiry of 30 days. The application of the Applicant primarily deals with the notice and seeks a remedy to prevent the Respondent from terminating the contract as notified.

On 20 June 2013, the Registrar of this court issued an interim order restraining the Respondent from terminating the consultancy contract executed between the Applicant and the Respondent on 10 February 2011 or from enforcing or otherwise implementing the purported notice and the letter of termination dated 22nd of May 2013. In other words, the court stayed the operation of the notice pending the hearing of this application. An interim measure of protection would have the effect of staying the operation of the notice of termination pending arbitration. If the notice runs its full course of 30 days, the question of whether the notice was properly issued cannot be determined by the arbitrator. After the notice has run its full course, the damages or remedy of the Applicant is contractual. Consequently the question is not whether damages would be an adequate remedy upon termination but whether the Applicant should be given an opportunity to present a case before the arbitrator challenging the notice purported to be properly issued under the provisions of clause 6.4.3 of the consultancy contract. Because the consequences of termination for convenience are obvious, the real controversy between the parties in this application cannot be determined on the basis of the contractual entitlement of the Applicant. The real controversy is on the propriety of the notice of termination for convenience in the circumstances of the case.

I have carefully considered the issue and in my humble opinion, the Applicant's application before the arbitral tribunal will be rendered nugatory if the question of the notice is not dealt with. In fact I agree entirely with the Respondent that the Applicant cannot argue that it would suffer irreparable loss on the basis of the termination only. The only loss that the Applicant would suffer if any is the purported loss to its reputation for determination of its services in the circumstances. What is most important is the principle of preservation of a right of hearing of the Applicant to address the arbitral tribunal on the notice itself before the 30 days expire. In doing so, the arbitral tribunal will decide whether the discretionary power of the Respondent was exercised in good faith or according to the principles of fair dealing. I particularly refer to the letter of the Applicant dated 24th of May 2013 giving a detailed background of what was happening and the problems between the parties. Particularly the Applicant indicated in that letter that they had sought the services of their lawyers for interpretation of clause 6.4.3. Secondly in their letter dated 12th of June 2013, they indicate that they had not received any response regarding their understanding of the circumstances leading to the decision/letter of the chairman Board of Directors giving notice of termination. Finally in the letter dated 18th of June 2013, the Applicants wrote to the Respondents complaining that the Respondent has not furnished the reasons or clarified on the circumstances giving rise to the alleged convenience on the basis of which they sought to terminate the contract. The response of the Respondent is that the Applicant is not entitled to any reason from the Respondent where the termination is for convenience. The question of the circumstances leading to termination for convenience is a

relevant consideration in establishing whether the notice was good or bad for bad faith or under the principles of fair dealing. The narrower question is therefore whether the Applicant should be given a chance to present that grievance to an arbitral tribunal. In my understanding of the case therefore, it is purely a question of the right of hearing. It is my finding that a dispute has arisen between the parties about the manner, propriety or grounds by which the Respondent issued a notice to terminate the Applicant's consultancy services. The Applicant has sought to stop the operation of the notice pending arbitration. I have further taken into account the fact that the Applicant had been a consultant for a period of over 40 years on the same project and the project is purportedly coming to completion. Clause 6.18 provides that where a dispute cannot be settled, it shall be referred to an arbitration tribunal. It would be imprudent for the court to decide the dispute at this stage. The right of hearing is a fundamental right and particularly it was contracted by the parties that a dispute shall be referred to arbitration and not handled by the court. The Respondent is bound by the terms of the contract. The Respondent has not submitted that there is no dispute as contemplated by the parties. The essence of the dispute would be rendered nugatory if the notice runs its normal course before the arbitrator makes an award in the arbitral proceedings. Consequently on the question of irreparable injury, the right of the Applicant to be heard in the arbitral proceedings would be rendered nugatory if an interim measure of protection is not granted at this stage. In other words the right of hearing cannot be atoned for by an award of damages. As to whether the reputation of the Applicant would have suffered is a matter that can be determined by the arbitral tribunal.

It is further my humble opinion, that the matter can be resolved within a period of about one month. The court still retains its discretionary and inherent powers, under section 98 of the Civil Procedure Act to make such orders as are in the interest of justice. Because the issue, upon which the application revolves, is the right of hearing before an arbitral tribunal, the court is obliged to ensure that the interim measure of protection does not prejudicially affect the project. It has been submitted by the parties that the project stalled. It was also suggested that the main Contractors contract expired in March 2013 and has not been renewed. In those circumstances, it is incumbent upon the arbitral tribunal to expedite the determination of the dispute and ensure that the project is not affected in any way.

In those circumstances, the interim measure of protection is granted for a limited period only. An interim measure of protection is hereby granted to preserve the Applicant’s right of hearing before the arbitral tribunal on the question concerning the notice of termination dated 22nd of May 2013, and therefore staying the operation of the notice for a further period of 40 days from the date of this order.

Secondly, an interim measure of protection by way of a temporary injunction is issued, restraining the Respondent from appointing or entering into other consultancy contracts with any third party in respect of the services envisaged under the consultancy contract between the Applicant and Respondent dated 10th day of February 2011 until the hearing and determination of the arbitration. This order shall last for a period of 40 days from the date of this order.

The arbitral tribunal shall as far as possible determine this dispute within the period of 40 days from the date of this order. The arbitral tribunal in any case has powers to grant interim relief under the provisions of section 6 (2) of the Arbitration and Conciliation Act or the general provisions of sections 17 of the Arbitration and Conciliation Act. Lastly, the costs of this application shall be costs in the arbitration cause and shall be decided upon by the arbitral tribunal. The prayer for costs of this application is accordingly referred to the arbitral tribunal for determination.

Ruling delivered this 21st day of July 2013.

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Noah Mwesigwa for the Applicant

Barnabas Tumusingize for the Respondent

Mr. John Sekaziga first Applicant in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

31st of July 2013.