

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION

HCT - 00 - CC - MA - 572 - 2011

ARISING FROM HIGH COURT ARBITRATION CAUSE NO 01 OF 2011

CAD/ARB NO 11 OF 2008

ARISING FROM CIVIL SUIT NO 489 OF 2006

- 1) RICHARD KAVUMA
- 2) SAM MUGISHA
- 3) HARRIET MUDONDO ----- APPLICANTS

VERSUS

- 1) HARRIET NANTAMU
- 2) ROSE NALUNGA
- 3) FOUNTAIN PUBLISHERS LTD ----- RESPONDENTS

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

R u l i n g

This is a ruling arising from a preliminary objection by the second and third respondents (hereinafter referred to as the respondents) that the applicants cannot be joined to an incompetent application No 135 of 2011.

The brief facts following under Arbitration in the matter of *Harriet Nantamu and anor V Fountain Publishers Ltd* CAD/ARB No 11 of 2008 an Award dated 7th September 2009 (hereinafter referred to as “the Award”) was delivered by the Arbitrator Rtd Justice Alfred Karokora.

The present Notice of Motion seeks to add the respondents to Misc. Application No ARB 01 of 2011 and also to Misc. Application No 135 of 2011.

The brief grounds of the application are that award effectively annulled the contracts made between the applicants and the third respondents Fountain Publishers and yet the applicants were

not a party to the arbitration. It is also the case for the applicants that the arbitral tribunal exceeded their terms of reference.

The applicants state that they have a right to be joined to the applications because they affect their rights

Mr E. Barata appeared for the applicants while Mr. P. Ssebunya appeared for the first and second respondents.

It is the case of the respondents that the award was made by the arbitrator in the presence of the lawyers of the parties on the 7th September 2009. It also the case for the respondents that the said award was deposited at the Centre for Arbitration and Dispute Resolution (CADER) the institution under which the arbitration was conducted on the same day. The basis for the objection of the respondents is that M.A. No 135 of 2011 to which the applicant wish to be joined was filed in Court one year and six months after the award was made and is therefore time barred. Section 34 (3) of the Arbitration and Conciliation Act (Cap 4 hereinafter referred to as the “ACA”) enjoins one who is desirous to set aside an arbitration award to do so before the lapse of one month from the date on which the party making the application received the award. Counsel for the respondent referred me to the Tanzanian High Court case of ***East African Development Bank V Blue Line Enterprises Ltd*** M.A. 134 of 2006 where **Mandia J.** held that an application to challenge arbitration when time barred should be dismissed.

He further referred me to the recent Court of Appeal decision in ***Roko Construction Ltd V Mohammed Mohammed Hamid*** Civil Appeal No 51 of 2011 (U) where an application to challenge an arbitration award was made five months from the date the award was made by the arbitrator in the presence of the lawyers of the parties and the Court of Appeal found that the application to challenge the award was not competent before the High Court because it was time barred and thus a nullity.

Counsel for the respondents submitted that the applicants cannot therefore be joined to M. A. 135 of 2011 because it is time barred and is a nullity in law.

Counsel for the applicants does not dispute the time lines of the arbitral award but states that the applicants only got to know of the award on the 3rd March 2011 and not the 7th September 2009 when the award was made. This was shortly before the 11th March 2011 when the third respondent filed in this Court M.A. 135 of 2011 to set aside the arbitral award.

It is the case for the applicants that it is not in dispute that they were not parties to the Arbitration and that any computation of time against the applicant can only be after the 3rd March 2011 when they got to know of the award.

I have considered the submissions of both counsels on this objection for which I am grateful.

The objection as I see it is that M.A. 135 of 2011 is time barred and is therefore incompetent and so the applicants cannot be joined to that which is incompetent.

I have already determined M.A. 135 of 2011 and agreed with Counsel for the Respondents that it was time barred and dismissed it. My reasons are in that ruling but basically are that I was bound to follow the decision in the recent Court of Appeal decision in **Roko Construction Ltd** (Supra).

It follows that the applicants cannot be joined to M.A. 135 of 2011.

The second argument of the applicants is that they were not a party to the arbitration so they did not “receive” the award until much later on the 3rd March 2011.

Section 2 (1) (i) of the ACA defines “**Party**” to mean “...means a party to an arbitration agreement and includes a person claiming through or under a party...”

The author **H. K. Saharay** in his book **Law of Arbitration and Conciliation** Eastern Law House while commenting on section 2 of the Indian Arbitration and Conciliation 1996 which is in pari materia with the Uganda ACA at page 204 writes

*“...An arbitration agreement is a contract...persons who are not parties to the arbitration agreement cannot enforce it. Thus, where a contract containing an arbitration clause is entered into between the Government and a contractor, a dispute between the contractor and its subcontractor or its workmen is germane to the arbitration agreement (he then makes reference to the case of **Union of India V Dalmiya engineering [P] Ltd AIR 1990 SC 70**)...”*

It would appear to me that only those parties (or those claiming through or under them) to an agreement can enforce an arbitral award. So unless the applicants were parties to the arbitration agreement, of which they were not, they do not have locus to enforce or otherwise challenge it. There is no evidence that the applicants claim through or under the first or second respondents

even though they also had a contractual relationship with the third respondent so they are third parties to the arbitration agreement.

That being the case the objections herein are upheld and I dismiss this application with costs.

.....
Geoffrey Kiryabwire
JUDGE

Date: 13/05/2013

13/05/13

10:14

Ruling read and signed in Court in the presence of:

- O. Kasata h/b for Sebunya for Respondent

In court

- None of the parties
- Rose Emeru – Court Clerk

.....

Geoffrey Kiryabwire
JUDGE

Date: 13/05/2013