THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

MISCELLANEOUS CAUSE No. 7 of 2015

AND

MISC. CAUSE No. 34 OF 2015 (AS CONSOLIDATED)

[Arising From International Chambers Of Commerce (Icc)

Arbitral Case 19677/Gfg]

ROOFCLAD LIMITED :: APPLICANT

VERSUS

SALZGITTER MANNESMANN INTERNATIONAL

GMBH (COMPANY) :: RESPONDENT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

RULING

This is an application under Section 34(2) (b) of the Arbitration & Conciliation Act Cap 4, Rules 7(1) and 11 of the Arbitration Rules, S.55 of the Companies Act 2012, S. 98 of the CPR seeking an order setting aside an arbitral award. The grounds upon which the application is premised are;

1. The arbitrator erred in law when she held that the applicant was liable as a guarantor without taking into consideration the absence of any legally binding corporate guarantee of the debt of Steel Rolling Mills Ltd.
2. The arbitrator acted on a misdirection of the law when she held that the applicant was liable for the debt owing to the respondent and exonerated the principle debtor.

3. The arbitral award is in conflict with public policy of Uganda having been determined based on a provisions of a repealed Companies Act Cap 110. Hence arriving at a wrong conclusion that the Settlement Agreement was validly executed.

Brief history of the case.

In 2011, the respondent a German based company supplied steel wire rods and prime hot dipped galvanized wires worth USD 636,684.30 to Steel Rolling Mills Ltd, a Uganda based company which failed to pay the said price in accordance with the terms of the supply contract. Steel Rolling Mills Ltd is a sister company of Roofclad Limited, the applicant.

In March 2013, Steel Rolling Millis Limited and the respondent executed a Settlement Agreement (the agreement) wherein both Steel Rolling Millis and the applicant agreed to being jointly and severally indebted to the respondent. Additionally the applicant undertook to guarantee the payment of the said debt on behalf of Steel Rolling Mills Ltd.

The applicant only made one installment payment of US $ 50,000. The respondent demands the balance and thus the dispute.

The respondent commenced arbitral proceedings in Zurich Switerzerland to determine the said dispute as agreed under the Settlement Agreement. The debtors submitted to the arbitration. Upon conclusion of the arbitral proceeding the single arbitrator rendered an award wherein the applicant was found liable to the respondent for the sum of USD 636,684.30 plus interest of 5.5% p.a on the full amount starting as of 1st April, 2013 until payment in full; EUR 49,025.19 and USD 3,753.00 as compensation for costs incurred by the respondent in conducting the arbitral proceedings and 90% of the cost of the arbitration in the sum of USD 49,500.00 to the respondent; and the applicant and Steel Rolling Mills Ltd to bear their own costs. The applicants did not settle the award. The applicant on 11th February 2015 filled an application seeking orders that the arbitral award be set aside. (Miscellaneous Cause No. 7 of 2015) In the meantime, the applicant filed for the enforcement of the arbitral award (Miscellaneous Cause No 34. 2015). By consent order court on the 18th May 2016 both applications were consolidated. When the said consolidated applications came up for hearing, court ordered that the application to set aside the arbitral award be disposed of first.

The parties raised the following Issues:

1. Whether the arbitrator erred in law when she held that the applicant liable as a guarantor for the debt of Steel Rolling Mills Ltd in the absence of a legally binding contract.
2. Whether the arbitrator erred in law when she held that the applicant was liable to pay the debt owing to the respondent and exonerated the principal debtor.
3. Whether the arbitral award is in conflict with the public policy of Uganda having been determined based on the provisions of the repealed Companies Act, Cap 110 Laws of Uganda.
4. Whether the Settlement Agreement was validly executed and if so, whether the applicant had lawful authority to guarantee the debt of Steel Rolling Mills.
5. Whether the application is time barred.

RULING

Whether the application is time barred.

Since the last issue is a determination as to whether the application is proper before this court, I find it proper to start with it.

The respondents argued that the application is time barred. They relied on section 34(3) of the Arbitral and Conciliation Act.

The Section provides that;

> *"an application for setting aside the arbitral award may not be made after one month has elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral award".*

The respondent contended that the application under the Act to set aside an arbitral award has to be filed in court within one month from the date when the award was received.

According to them, the award was delivered on 18th December 2014. The applicant was represented in the arbitral proceeding by Mr. Fred Muwema and Mr. R Kabayiza and none of the said lawyers indicated that the Arbitrator did not deliver the award on 18th December 2014.

Counsel for the respondent relied on the case of ***Roko Construction Ltd Vs Mohammed Mohammed Humid CA Civil Appeal No. 51 of 2011*** where the court of appeal held that an application for settling aside an arbitral award filed after the expiry of a period of 30 days from the date of receipt of the award is a nullity in law. In the case, under review the arbitral ruling was delivered to the respective party's Counsel on 18th December 2014 and in accordance with Section 31(8) of the Arbitral and Conciliation Act, a signed copy was to be issued to each party.

Counsel argued that since the application to set aside the award was filled on 11th February 2014 when the award was delivered 18th December 2014, it was therefore 2 months out of time.

On their part the applicants argued that they got to know of the award by way of a latter from the lawyers of the respondent dated 13th January 2015 and the application to set aside was filed on 11th February 2015 which according to them was still in time as provided for by the law.

Counsel for the applicants in his submissions in rejoinder stated that the wording of section 34(3) of the Arbitration and Conciliation Act, clearly provides that the application may not be made a month after the award was received. That the rules of statutory interpretation are very clear and words must be given their plain and simple meaning.

According to Counsel since the award was passed in Switzerland which is outside Uganda then the date of delivery of the award cannot be construed to be the date on which the award was actually received by the parties.

In the case of ***Roko Construction Ltd Vs Mohammed Mohammed Hamid Civil Appeal No.51 of 2011,*** an application was made to set aside an arbitral award six months from the date the award was delivered by the arbitrator in presence of the lawyers of the parties. The court of appeal found the application incompetent, that it was time barred and a nullity in the law. The Court of Appeal held that the application to set aside an arbitral award must be made within one month from the date the award was received by the party.

The issue for determination therefore is when the award is said to have been received by the parties.

In the case of ***Fountain Publishers Vs Harriet Nantamu and Another HCT 135 of 2011,*** an award was delivered on 7th September 2009 and filed with CADAR on the same day but was not

physically given to the parties because of the issue of payment. The parties applied to set it aside and an objection about it being time bared was raised. Court held that it was a nullity and dismissed the application. Court stated that;

> *"To my mind receiving an award like receiving a judgment is on the day the judgment is read and signed. I respectfully do not agree that it is on the day that the award is physically given or is available to a party".*

I agree with the holding above that receiving an award should be continued to be the day it was delivered and not necessarily on the day the parties were physically given or availed the award.

Under the circumstances therefore, since the award was delivered on 18th December 2014 and the application was brought 53 days after, contrary to the dictates of the law I am convinced that the application is time barred and accordingly a nullity.

In the result Misc Cause No. 7 of 2015 is dismissed with costs.

This decision has the effect of disposing of Misc. Cause No. 34 of 2015 which is in the circumstances struck out. I make no order as to costs in that application.

B. Kainamura
Judge
26.07.2017