

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISC. APPLICATION NO. 03 OF 2017
(ARISING FROM AB 24/2016)

INFINITY TELECOM UGANDA LIMITED
KINETIC TELECOM LIMITED
MUKAMA ATUKWASE ENTERPRISES:.....:APPLICANTS

VERSUS

ORANGE UGANDA LIMITED:.....:RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This is an Application filed by Infinity Telecom Uganda Limited, Kinetic Telecom Limited, Mukama Atukwase Enterprises referred to in these proceedings as the Applicants against Orange Uganda Limited to be called the Respondent.

The Applicants seek the following orders;

- a) That there are illegalities arising from the Arbitral Award.
- b) That the Arbitral Award be varied and or set aside.
- c) That illegality was pleaded in the Appellants' claim.
- d) And was pleaded and proved against the Respondent.
- e) That this court awards damages as earlier claimed in the statement of claim.
- f) That the impugned Award be varied.
- g) That the damages awarded under the Counterclaim against the 3rd Applicant be set aside.

This Application is grounded on the following;

- a) That the learned Arbitrator did not properly evaluate the evidence on record and thus came to a wrong decision and Award.
- b) That the learned Arbitrator erred in law and fact when he found the matter of illegality against the Respondent had not been claimed.
- c) That the learned Arbitrator erred in law and fact when he held that the communication laws relied on by the Applicants were not applicable.
- d) He erred when he held that special procedures and authorities were set out to deal with disputes under communication laws.
- e) That the Arbitrator shouldn't have dismissed the Applicant's claim nor awarded costs against the 3rd Applicant.
- f) That the learned Arbitrator should not have awarded the Respondent the Counterclaim damages.

The background to this Application as discerned from the statement of claim is that Infinity Telecom Uganda Limited and Distribution Maestros Limited who were private limited liability companies had entered into a Dealer Partnership agreement with the Respondent on the 2nd day of February 2009.

In the agreement the Claimants were to distribute and sell the Respondent's product in the telecommunications business. Their relationship however developed problems which ended before an Arbitrator in which the Claimant sought amongst others; declarations that the Respondent was in breach of the Dealer Partnership agreements and that the Respondent had acted in bad faith in transacting their agreement.

They also sought exemplary damages, special damages, general damages and costs.

And in yet another claim, this time by Kinetic Telecom Limited and Mukama Atukwase Enterprises against Orange Uganda Limited the Respondent herein similar reliefs were sought.

At the end of the proceedings, the learned Arbitrator found in favour of the Respondent and the Applicants being aggrieved by the awards filed this Appeal/Application.

When it came up for hearing, the Respondent through their Advocates raised preliminary objections namely; that the Application to set aside was time barred, that it was in the form of an

Appeal and the High Court had no jurisdiction to entertain it. Further that the Application did not meet the requirement of section 34 of the Arbitration and Conciliation Act.

This court had occasion to thoroughly peruse the Application, the responses and supporting documents. I also attentively listened to both parties and have come to the conclusions hereunder below.

From the very start, this Application was filed as Civil Appeal on 22nd December 2016 and given number 44 of 2016. What surprises court is that without withdrawing it, the same Application bearing now date 4th January 2017 was renumbered Miscellaneous Application Number 3 of 2017.

There was no Application to amend the Civil Appeal. Cancellation of the heading Civil Appeal and changing it to Miscellaneous Application 16 days later did not change the character of the Application that was filed on the 22nd December 2016.

What the Applicant however did was a change in dates of filing on the record which in my view as I shall state herein after only aggravated the time of filing such an Application in view of section 34(3) of the Arbitration and Conciliation Act.

Furthermore while the Applicant now had renumbered as Miscellaneous Application 3 of 2017, the Chamber Summons itself spoke of an Appeal in the words;

“An Appeal from the Arbitral Award of Mr. S.W.W. Wambuzi (Chief Justice Emeritus) given at his residence at Ntinda Kampala on the 29th September 2016.”

The foregoing does not only prove that the Applicant moved by way of an Appeal, but it also gives 29th September 2016 as the operative date should the issue of computation of time within which an aggrieved party should take the next step arise.

The questions then to be determined in the preliminary objections are whether;

- a) An appeal against an Arbitral award can be entertained by the High Court.
- b) The Application was filed within time specified.

That this Application has been brought by way of an Appeal against the award is not in doubt. The Applicants have in the Chamber Summons referred to it as an Appeal in which they have even sought damages against the Respondent.

The Arbitration and Conciliation Act defines the areas in which the High Court can set aside. These parameters are provided for under section 34 of the Act. Section 9 of the same Act prohibits the High Court to act outside section 34 when dealing with setting aside the award.

Appeals are not provided for under section 34 and therefore entertaining an Appeal as the one before court now, would be acting outside the jurisdiction of this court; **Babcon Uganda Limited vs Mbale Resort Hotel CA No.87 of 2011.**

Turning to time, the Application clearly states that the Applicant appeals against an Arbitral Award given on the 29th September 2016. Section 34(3) provides;

“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 the application had received the arbitral award.”

The Applicants first filed an Application on the 22nd December 2016. On the 4th January 2017 they again **“filed”** another one by changing the heading to read Miscellaneous Application instead of Civil Appeal although the body still referred to an appeal.

Computing 30 days from 29th September 2016 would give 29th of October 2016 inclusive as the 30th day. It follows that the filing of this Application had to be filed before the 31st of October 2016.

The parties have agreed that an additional award was issued on the 26th October 2016. I have considered that as well and in my view even if one treated the 26th October as the date of commencement of computation of 30 days, the time allowed under section 34(3) would still expire on 25th November 2016. Again if the Applicants were to seek the setting aside of the award, they had to do the filing before the 26th November 2016.

The Applicants argued that they had filed it under Rule 7 which provided 90 days but Rule 7 cannot be applicable because the Act specifically provides the time period within which the

Application to set aside can be filed. A rule therefore cannot override an Act of Parliament which can only be amended by another Act of Parliament.

The sum total is that the filing of the Appeal referred as Application was done out of time and this court has no jurisdiction to enlarge that time once expired. To do so would be acting in breach of section 9 of the Arbitration and Conciliation Act.

In conclusion the Appeal cum Application is dismissed with costs.

Dated at Kampala this 8th day of January 2018.

Hon. Justice David Wangutusi

JUDGE