THE REPUBLIC OF UGANDA

IN THE HIGH COURT AT KAMPALA

COMMERCIAL DIVISION

MISC. APPLICATION NO. 952 OF 2019

ARISING FROM ARBITRATION CAUSE NO. 16 OF 2091

ARISING FROM CAD/ARB/ NO. CADER NO. 47 OF 2018

GLOBAL WIRE INDUSTRIES :: APPLICANT

VERSUS

TRIDENT INFRATECH LTD :: RESPONDENT

BEFORE: HONOURABLE JUSTICE DR. HENRY PETER ADONYO

RULING

1. Background:

This application is brought under section 34 of the Arbitration and Conciliation Act for orders that;

i. The award issued in CADER NO. 47 of 2018 be set aside.
ii. Without prejudice, a declaration that the Arbitrator had no jurisdiction to entertain the counterclaim in relation to the theft of the Applicant's property.
iii. Provision be made for costs of this application.

The grounds of the application as contained in the affidavit of Mr. Rajiv Sabharwal, the director of the Applicant Company are that;

i. That on the 1st day of July 2017 the parties entered a tenancy agreement for property located at Plot 3565 Block 111 Kyaggwe Mawoto

ii. That Clause X of the said agreement provides that all disputes arising from the agreement must be settled by way of arbitration, with the option of appeal for the dissatisfied party

iii. That through hoodwink by way of material concealment and misrepresentation by the Respondent, Mr. Sabharwal appended his signature on all the pages as directed by the Respondent's agents

iv. Disputes arose and the Respondent chose to terminate the said tenancy by a five days notice which was a deviation from the terms of contract

v. According to the said agreement, all disputes were to be handled and determined by an Arbitrator appointed by the parties

vi. That still in an unjustifiable haste, the Respondent rushed for compulsory appointment of an Arbitrator by the Centre for Arbitration and Dispute Resolution (CADRE)

vii. That the Director of CADER then hastily appointed Mr. Fred Kiiza Businge, an advocate of the High Court, in spite of the Applicant's objections.

viii. That the Applicant then counterclaimed for the theft of its property worth UGX 220, 000,000/-.

ix. That the said Arbitrator acted with utter partiality and totally ignored the Applicant's evidence submitted in support of the counterclaim.

x. That the Arbitrator ignored and stated that apart from the police case reported at Mukono Police Station, there was no evidence adduced in court to prove the theft, which indicates that he totally ignored the testimony by the RW2 (Arionget Schola).

xi. That on the other hand, the Arbitrator placed emphasis on whatever the Respondent said without no evidence at all indeed exhibiting a biased mind.

xii. That when the Respondent submitted that the criminal charges were dropped by the DPP, the Arbitrator accepted the same without any evidence of withdrawal of the said charges ever being tendered or talked about.

xiii. That the said Arbitrator relied on the valuation report by a non-qualified person holding out as a valuer, even after this was brought to his attention by the Applicant.

xiv. That the Arbitrator only analysed and relied on the evidence by the Respondent, thereby exhibiting glaring partiality.

xv. That whereas the Respondent had clearly prayed for the award of USD 19,680 in rent arrears, without basis or semblance of the same, the Arbitrator awarded way in excess of what was claimed.

xvi. That the process for the appointment of the said Arbitrator was in utter breach of Clause X of the agreement between the parties.

xvii. That the arbitration agreement was in itself illegal.

xviii. That indeed the Arbitrator had a relationship with the lawyer who represented the Respondent in the said arbitration proceedings.

xix. That the Respondent hoodwinked the Applicant's company director into signing the arbitration clause yet he did not understand the contents of the same.

xx. That the Arbitrator had no jurisdiction to handle and determine the counterclaim in respect of the theft of the Applicant's property.

Mr. Ramesh Halai, the director of the Respondent Company, swore an affidavit in reply to the application. In the affidavit, Mr. Ramesh deponed that:

The Respondent and the Applicant entered into a tenancy agreement on 1st July 2017 wherein the Respondent rented out three (3) warehouses to the Applicant. (*Paragraph 4)*

The Applicant committed several fundamental breaches of the tenancy agreement including refusal to pay rent, using the warehouse as factory which contravened the tenancy agreement. (*Paragraph 5)*

The Respondent then terminated the tenancy by way of letter dated 26th March 2018, with immediate effect. The Applicant then obtained an order from the Chief Magistrates Court of Mukono which allowed it to stay in the premises. The Court, relying on Clause X of the tenancy agreement also made an order referring the matter to arbitration. (*Paragraphs 6 and 7)*

That the Respondent then filed a notice of arbitration and served the Applicant, and also applied for the appointment of an arbitrator under sections 11 and 21 of the Arbitration and Conciliation Act, and the application was served on the Applicant through its counsel. (*Paragraphs 8 and 9)*

The Applicant, Respondent and their respective counsel were present at the hearing of the Application and the matter was heard inter- partes and an award was made by the Arbitrator on 24th June 2019. *(Paragraphs 10, 11, 12 and 13)*

The Applicant had legal representation at the arbitration proceedings, fully participated in the proceedings, and at no point did the Applicant's Director mention that he did not understand the English language. The Applicant was also fully aware of the terms of the tenancy agreement and was never hoodwinked into signing the same. (*Paragraphs 14, 15 and 16)*

Regarding the counterclaim, that the Arbitrator made a finding on this issue, based on the evidence presented before him, and the Applicant's lawyers had a chance to cross- examine the Respondent's witnesses. Furthermore, that the

Respondent presented proof of withdrawal of the robbery charges by the DPP, which the Arbitrator upheld. (*See paragraphs 18, 19 and 20*)

That Arbitrator also made an award for the payment of all outstanding rent arrears as owed by the Applicant who was still in possession of the Respondent's premises; and that the Applicant also admitted that it is indebted to the Respondent to a tune of USD 58,000 (United States Dollars Fifty Eight Thousand) *(See paragraphs 23 and 24)*

The arbitration clause in the tenancy agreement is legal, and was upheld by CADER; that the Applicant cannot plead that the Arbitrator has no jurisdiction to determine the counterclaim; that the Applicant fully participated in the arbitration process by paying the Arbitrator's fees as agreed between the parties, attending proceedings and even giving testimony and filed the counterclaim. *(See paragraphs 26, 29 and 30)*

Through its deponent, the Director of the company, the Applicant gave a sworn testimony under oath, was duly cross examined in the English language and properly answered questions without the aid of an interpreter. *(See paragraph 31)*

2. **Submissions:**

Mr. Mulangira Arthur, assisted by Mr. Joel Ayijuka appeared for the Applicant while Mr. Dan Busingye represented the Respondent. The parties filed written submission

a. Applicant's submissions:

Counsel for the Applicant submitted that the Applicant's company director is illiterate within the meaning of section 1 of the Illiterate Protection Act, and that the Tenancy Agreement was prepared by the Respondent in English, a

language he does not understand, without a certificate of translation or interpretation so he did not understand the contents of the agreement.

Mr. Murangira relied on ***Violet Nakiwala and 2 Others vs Ezekiel Rwechibiba C.S No. 280/2016*** where the court found that the provisions of the Illiterates Protection Act are of substantive law and not mere technicality. Mr. Ayijuka added that although the Applicant director who is an Indian national appended his signature to the Tenancy Agreements which embedded the Arbitration clauses from which the dispute arose, he did not understand its contents since there was no interpretation or translation.

On the second limb of their submissions, counsel argued that the Arbitrator dealt with matters not contemplated within section 34 of the Arbitration and Conciliation Act and the arbitration Clause (X).

b. <u>Respondent's submissions:</u>

Counsel for the Respondent, Daniel Busingye, submitted that the Applicant's Company Director was conversant with English was envisaged by the fact that he did not make any requests for interpretation while the court was proceeding in English. According to counsel, there was also no evidence adduced to show that Mr. Rajiv does not understand English.

Mr. Busingye submitted further that the Applicant's Company Director signed the Tenancy Agreement without any opposition and that when it was terminated, the Applicant went to Mukono Chief Magistrate's court where proceedings were carried out in English; that he also cross- examined the Applicant's Company Director during the subsequent arbitration proceedings and at no time did Mr. Rajiv's lawyers object to him being cross- examined in English without interpretation.

In rejoinder, Mr. Murangira submitted that Mr. Rajiv's affidavit bears a certificate of translation to confirm that he is not well acquainted with English;

and that he pursued the matters before court through counsel who understand English and not personally.

3. <u>Decision:</u>

a. <u>Whether the Applicant's Director falls within the meaning section 1 and 2 of the Illiterates Protection Act:</u>

According section 1 (b) of the Illiterates Protection Act, Cap. 78,

"Illiterate" means, in relation to any document, a person who is unable to read and understand the script or language in which the document is written or printed.

Section 2 of the Act requires that *'prior to the illiterate appending his or her mark, the document was read over and explained to the illiterate.'*

In ***Nakiwala and 2 Others vs Rwekibira and Another (supra),*** the Supreme Court found that an illiterate person cannot own the contents of the documents if they were not explained to him, that the provisions of the Act are couched in mandatory terms, and failure to meet the requirements of the Act renders the document inadmissible.

Counsel for the Applicant contends that the Applicant's Director who signed the tenancy agreement on behalf of the agreement is illiterate. That because he is illiterate and there was no interpretation so he did not understand the provisions of the arbitration agreement, particularly clause X.

A look at the tenancy agreement reveals that it was duly signed by both parties. There is *no jurat* or certificate of translation showed on that agreement. For this, the Applicant's counsel puts the blame squarely at the door of the Respondent's counsel Daniel Busingye who it says drafted the document. On its part, the Respondent denied having done so. However, what is important, is

that the Applicant's Director had the opportunity to bring it to the attention of the Respondent but nowhere was it stated that he did so.

Mr. Murangira for the Applicant also urged the court not to visit the mistakes of previous counsel on the Applicant, and that the proceedings during arbitration were pursued by counsel who had good conduct of English and not the Applicant's Director/ deponent. Going by the arguments presented by counsel, this contention cannot stand. I agree with counsel for the Respondent that no evidence was brought forward by the Applicant to prove that Mr. Sabharwal was illiterate.

Counsel for the Respondent told the Court that during the arbitration proceedings he cross-examined Mr. Sabharwal. Unfortunately this court does not have access to the transcript of the arbitration proceedings and as such it is impossible to determine the nature of questions that were put to him during cross-examination and whether he clearly understood those questions. However, nowhere were these issues ever mentioned. As such I would find it doubtful as to whether the provisions of the Illiterates Protection Act and principles mentioned above are applicable in this case as there is no proper evidence that the Applicant is illiterate. Therefore, I find it difficult to agree to the contention by the Applicant that the arbitration proceedings were illegal. For the aforementioned reasons, the court finds that the Applicant's Director does not fall within the protection of the Illiterates Protection Act.

b. <u>Whether the Arbitration clause is illegal:</u>

The Applicant argues that Clause X of the Tenancy Agreement is illegal in so far as it provides for an appeal court against the decision of the Arbitrator and also that it was prematurely applied since it requires that before the commencement of arbitration steps be taken towards mediation of a dispute within 30 days which was not done in this case.

The fact of the matter is that on 26th March 2018 the Respondent terminated the tenancy agreement due alleged breach of several fundamental clauses of the of the Tenancy Agreement including the use of premises as a steel factory without the consent of the Respondent, the storing of unwanted scrap in the parking space, the failing to keep fixtures and the premises in good working condition, the causing pollution hence becoming a nuisance to the neighbours, the failing to install firefighting equipment and insuring the property among many other breaches others. The Applicant then sought redress from the Chief Magistrate's Court at Mukono by filing Civil Suit No. 57 of 2018. The learned Chief Magistrate in her ruling referred the matter to arbitration in line with Clause X of the Tenancy Agreement and section 5 of the Arbitration and Conciliation Act.

On 4th September 2018, the Respondent's lawyers wrote a letter (*See Annexture C to the affidavit of Mr. Ramesh Halai*) to the Applicant again declaring dispute arising from several clauses of the tenancy agreement which it accused the Applicant of breaching. The Respondent then invoked Clause X of the Tenancy Agreement and proposed the appointment of Mr. Silver Owaraga as the Arbitrator and asked the Applicant to respond to the claim within 14 days from the receipt of the letter. On 24th September 2018 the Respondent's lawyers wrote to the Applicant's lawyers highlighting the commencement of arbitration proceedings under section 21 of the Arbitration and Conciliation Act and also proposing the appointment of an arbitrator (s). On the record, there is no evidence of the Applicant's response to these letters.

Subsequently, the Respondent filed an application before the Centre for Arbitration and Dispute Resolution (CADER) for the appointment of an arbitrator. The Applicant did not file or serve a response or written submissions in that application.

In the ruling on the appointment of an arbitrator the Director of CADER highlighted the importance of the arbitration clauses. He noted that;

Arbitration clauses must be written with either pre-arbitration or post-arbitration dispute resolution procedures.

The pre-arbitration provisions often refer to mediation, negotiation, adjudication and all other manner of processes invented by the parties. The post-arbitration provisions often refer either to reviews or appeals, which in a nutshell are pre-award correction or enforcement measures.

Clause X here is written with both pre-and-post dispute resolution procedures.

Whatever be the case, the pre-arbitration or post-arbitration provisions are only enforceable if they with clarity provide enforceable steps.

Clause X of the Tenancy Agreement signed between the parties thereto provides that;

> ***"... Any dispute arising in connection with this (sic) agreement, which cannot be solved amicably within (30) days after receipt by one party's request, shall be referred to an Arbitrator appointed by both parties in accordance with the Arbitration and Conciliation Act Cap 4, and if the dispute is not resolved, then the matter shall be referred to court of competent jurisdiction. The place of arbitration shall be Kampala, Uganda and the language used shall be English. The arbitral award shall be reasoned and in writing, each party shall initially bear their own costs of arbitration, and shall share the costs of the arbitrator. The arbitrator may allocate or apportion costs between the parties..."***

In my view these provisions of the Tenancy Agreement provides the rationale of what the parties agreed to as the method determination any dispute which may

arise between the parties in as far as the tenancy agreement is concerned. When drafting dispute resolution mechanisms the parties are presumed to be aware of several issues which will guide their agreement in mind including the dispute resolution method that is to be applied when they disagree, how long that will take and how if it can be appealed, its determination either before a single arbitrator or a panel of arbitrators, the legality of their action and so on. These are the questions which are usually borne in the mind of the parties and thus once resolved and reduced into writing and if not illegal, then courts would usually not interfere with freely entered into legal contracts.

Additionally it is presumed that parties are aware that the choice of any mechanism to resolve any dispute between themselves which ought to be consensual. Further such a clause when included in any contract always provides a wide scope to accommodate all disputes that may arise resulting from the contract between the parties with specific clauses setting out how the disputes will be resolved including the use of mediation, arbitration or litigation.

Once a dispute resolution mechanism is set out in a court, and thereafter a dispute arises as to what it imports, the duty of the court would be to look into that clause and see whether it was drafted with clarity and was not ambiguous with the court giving effect to the parties' wishes on how any dispute arising from within the contract would be resolved. The parties thus must ensure that such a clause is properly drafted for where the clause has been poorly drafted then parties could find themselves with unintended consequences. (See: **Dispute Resolution Clauses: An Overview** (https://www.ashurst.com/en/news-and-insights/legal-updates/dispute-resolution-clauses-an-overview/).

Under the Law of Contract, although parties are allowed to contract between themselves their intentions must be laid out clearly and should be certain a was held in the case of ***WN Hillas & Co. Ltd vs Arcos Ltd [1932] UKHL 2 (05***

July 1932) with each party to the agreement permitted to pursue their own intentions provided there are no misrepresentations and the agreement is within the limits of the law. The courts will then interpret the words or construe them in a manner that gives effect to the intention of the parties. See: ***Obwana Peter vs Malaba Town Council and 2 Others Civil Appeal No. 139/2013***

From the tenancy Agreement signed by the two parties before me Clause X provides that **'... Any dispute arising in connection with this agreement, which cannot be resolved amicably within (30) days after receipt by one party's request...'**

In relation to this clause, it is the Applicant argument that the notice of arbitration was premature since Clause X of the Tenancy Agreement provided for some form of resolution of any dispute arising from the tenancy agreement between the parties and which was to be done within 30 days which was not the case thus a breach of the intention of the parties when an arbitrator was appointed which partly was the fault of the parties for failing to specify within the agreement the mechanisms for an ***'amicable settlement'*** between themselves.

That being the case, I would find that the clause in the tenancy agreement referring to an *'amicable settlement'* though being ambiguous and therefore void and unenforceable for it does not with clarity provide for what and how this amicable settlement would be carried out in keeping in mind the principles articulated above in regards to contracts, it continues further to state that '... *any such dispute shall be referred to an Arbitrator appointed by both parties in accordance with the Arbitration and Conciliation Act Cap. 4 and if the dispute is still not resolved, it would be referred to a court of competent jurisdiction...*"

From the earlier proceedings I find that this part of the agreement signed by parties was used by signed by both parties was used by the Chief Magistrate at

Mukono who referred both parties to arbitration which action I uphold as being the correct line of action for this was the clear available remedy to the parties mentioned in the tenancy agreement contrary to the Applicant's Director's averment in the affidavit in rejoinder that its reference was illegal since Clause X of the tenancy agreement formed the intention of the parties. It is thus legal and enforceable since it is clear and unambiguous.

This is indeed what the parties did though pleadings do not show anywhere that the Applicant responded to the order of the Chief Magistrate to attend to an arbitration process nor acted upon the Respondent's letters upon the appointment of an arbitrator or referral of the matter to arbitration, the records do show that the Applicant attended the hearing of the application on 15th October 2018 and even following the appointment of an arbitrator, the Applicant agreed to submit to the process of arbitration during which process the Applicant was legally represented and even presented witnesses who were properly cross-examined.

Thus Arbitration being a consensual matter between two parties means that mutual obligations arise on either side once the arbitration clause is invoked and as such each party becomes obligated to co-operate with the other to ensure that a dispute at hand is resolved as per the mechanisms laid down in their agreement.

In the instant matter, the tenancy agreement was such a document which reflected the intention of either and that is what this court will enforce. See: ***Bremer Vulkan Schiffbau Maschinenfabrik vs South India Shipping Corporation Ltd [1981] A.C 909***, at pages 982-986 cited in ***Trident Infratech Ltd vs Global Wire Industries Ltd. CAD/ARB/47/2018)***

Therefore by the very fact that this matter was referred to arbitration in their contract, that is the tenancy agreement, then both are enjoined to submit the arbitrator in the matters in dispute and abide by the procedures and

proceedings adopted therein as long as they are within the confines of the law and the rules of natural justice. Neither party can claim at this point that the arbitration agreement nor clause relating to it was illegal because these clauses were clear unambiguous and reflected the intention of the parties.

In the premises I find that the Applicant cannot allege that it was never given the opportunity to appoint an arbitrator or that it was the Respondent who proposed the arbitrator without its input because it fully participated and was aware of the proceedings and there is no evidence of its opposition to the appointment of the Arbitrator or the arbitration process.

I therefore make a finding that that Clause X of the Tenancy Agreement in as far as relating to the appointment of an arbitrator to be legal and enforceable, and rejects the Applicant's contrary arguments.

c. <u>Counter claim on theft:</u>

The Applicant filed a counterclaim during the arbitration proceedings in which it stated that the Respondent and its agents had robbed about 2,200 binding wires, wire rods among other products valued at UGX 220,000,000/=. That these were loaded on trucks and taken away and that the incident was investigated by Mukono Central Police Station CID vide SD REF 46/25/03/2018, SD REF 60/24/03/18, SD REF 31/25/03/18 and SD REF 57/24/03/18 on charges of aggravated robbery, simple robbery and others.

The Arbitrator found that from the evidence led, the case of robbery and theft of the Applicant's goods (then Respondent in that matter) was dismissed by the withdrawal of charges. On this basis the Arbitrator declined to handle the charges criminal matters which beyond his jurisdiction thus adequately pronouncing himself on the counterclaim. In the premises, the court declines to grant the Applicant's prayer on the counterclaim which should be pursued elsewhere than in a civil court.

d. <u>Breach of Tenancy Agreement:</u>

The other averment of the Applicant is that it did not breach the tenancy agreement but rather it was the Respondent who breached the agreement when it issued a notice of termination of the tenancy agreement within 5 days within breach of the provisions of the agreement.

A look at the specific provisions of The tenancy agreement in regards to this aspect provides as follows;

> ***'...The Parties hereby agree that this tenancy may be terminated by either party giving the other (6) months' notice in writing. The Parties also agree for purposes of this clause that if the Landlord terminates this agreement for reasons not attributable to breach of terms of this Agreement by the Tenant, then the Landlord shall refund to the Tenant any rent paid in advance for any unutilized period above the notice and if terminated due to a breach by the Tenant, the Landlord shall refund to the Tenant the balance of any advance payment of rent after the deduction of and the monies due to the Landlord under this agreement by virtue of the said breach...***"

In a letter dated 26th March 2018, the Respondent's advocates wrote to the Applicant's lawyers notifying them of the termination of the tenancy agreement and requiring them to vacate the premises within 5 days of the receipt of the notice, failure of which the Respondent would re-enter the premises at the Applicant's cost.

The eviction of tenants who are deemed to be in breach of the tenancy agreements is regulated by the Landlord and Tenant Act 2019 which requires that where a tenant fails to vacate premises after having been given notice then the Landlord will require a court order for the eviction of the tenant. The Act

also requires that an agreement shall be terminated upon agreement between the tenant and landlord, and in accordance with the act (specific provisions to be added)

Moreover, for business tenancies, the landlord must grant a period of not less than six months for eviction.

In the case before the court, the Respondent appears to have violated the provisions of the Act and the tenancy agreement and instead would have required a court order to evict the Applicant in such a manner.

As rightly noted by the Arbitrator, breach was however addressed the interim order of the Chief Magistrates Court which stopped the eviction of the Applicant. As of June 2019, the Applicant was still occupying the suit premises. As such, this breach was cured.

Having reviewed the evidence on record, I am in agreement with the finding of the Arbitrator that the Applicant was in breach of the Tenancy Agreement. It was found that while the Applicant was required to use the premises for warehousing and storage services purposes only and not any other use without the written consent of the Tenant-Respondent pursuant to Clause (ii) of the Tenants Covenants with the Landlord, the evidence presented by the witness CW1, Mr. Ramesh Halai was that several visits to the suit premises showed that the Applicant was using the suit premises as a steel factory with even the Applicant witness Arionget Schola testifying that the premises were being used to make binding straight wires. These pieces of evidence clearly showed complete negation of the use of the premises as was agreed by the parties and no evidence was presented by the Applicant to show that it sought the first written consent of the Respondent tenant to change the user of the suit premises.

Therefore I find that it is the Applicant who indeed breached the clear terms of the tenancy agreement when it changed the suit premises use without first obtaining the consent of the respondent.

Others breaches on the part of the Applicant included the failure to pay utility bills to the tune of UGX 34, 516 (for electricity) and UGX 1,021, 316 (water bills) contrary to clause viii of the Tenants Covenants with the Landlord and the failure to pay rent for the suit premises which had accumulated to over USD 44, 240 as the initial rent paid by the Applicant expired in December 2017.

In conclusion, I find that the Applicant who was in breach of the Tenancy agreement.

e. Claim/ Award made by the Arbitrator:

The Applicant also averred that Arbitrator awarded the Respondent in excess of what was claimed that although the Respondent had only claimed rent arrears amounting to USD 19680 it was awarded in excess of this amount and that the claim and damages were assessed on a valuation conducted by a non-qualified valuer.

From the evidence before me, I note that the Arbitrator based his award on pieces of documents tendered as C. Exh 9 and C. Exh.10 submitted by the Respondent (Claimant) seeking damages for the loss suffered due to the non-payment of the money owed and the money owed was USD 44, 240 (United States Dollars Forty-Four Thousand Two Hundred Forty Only) as at 30th March, 2019. Further consideration was made of evidence C Exhibit 8 in relation to C Exhibit 7 where the Respondent sought special damages of USD 52, 604 (United States Dollars) to rectify the damage caused to the warehouse.

In his determination the Arbitrator noted that ***"... it is not necessary to replace the hole with BRC A142 to reseal the holes. The plan of CW2 appears to this Tribunal as an unjust enrichment of the Claimant.***

However, the Tribunal appreciates the need to carry out repairs. This Tribunal finds the award of USD 20,000 (United States Dollars Twenty Thousand Only) as reasonable in the circumstances to help the Claimant carry out reasonable and necessary repairs..."

The Arbitrator then granted all the orders sought by the Respondent/ claimant.

I find that this was the correct assessment for the Arbitrator made based on the outstanding rent arrears as owed by the Applicant who was at the time of the arbitration was still in occupation of the Respondent's warehouses and that during the arbitration proceedings the Applicant admitted being indebted to the Applicant to the tune of USD 58, 000.

Furthermore the Applicant itself did not make any response or challenge to the Claimant/Respondent's claim nor take the opportunity to challenge the valuer's claim despite presenting its witnesses before the arbitrator and so as such it is precluded from challenging the Respondent's claim at this stage.

In the premises this application fails with this court declining to grant the Applicant's orders the orders it sought in this application. In the result the below orders are made.

7. <u>Orders.</u>

a) This application is denied.
b) The award issued in CADER NO. 47 of 2018 is upheld.
c) The Applicant to meet the costs of this application.

I do so order accordingly.

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HON. JUSTICE DR. HENRY PETER ADONYO

JUDGE

20TH MARCH 2020