

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMMERCIAL DIVISION  
MISC. APPLICATION NO. 691 OF 2021  
(Arising from Commercial Court Arbitration No. 6 of 2020 and  
CAD/ARB/NO. 53 of 2017)**

**ALIOS ALLIANCE LIMITED ..... APPLICANT**

**VERSUS**

**1. NSJ INVESTMENTS LIMITED ]  
2. NAVNIT PATEL alias NAVNIT BHAI, ]  
CHANDRAKANT PATEL, CHANDRAKANT BHAI] .....RESPONDENTS**

**BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO**

**RULING**

Introduction

This application was brought by Chamber Summons under Sections 2(f), 35 and 36 of the Arbitration and Conciliation Act, Cap 4, and Rule 13 of the Arbitration Rules for orders that:

- (i) An arbitral award issued on 6<sup>th</sup> August, 2019 be recognized.
- (ii) An award by consent of the parties made on 5<sup>th</sup> November, 2020 be recognized.
- (iii) A decree does issue in terms of the consent of award by consent of the parties and enforced.
- (iv) Costs of this application be provided for.

Background

The application was supported by an affidavit sworn by Charity Itungo Matsiko, an advocate working with Enoth Mugabi Advocates & Solicitors, the Applicant's advocates. The Applicant and Respondent entered into an agreement on 7<sup>th</sup> December, 2012 for the development and sale of land comprised in FRV 331 Folio 13 Plot 34, Elizabeth Avenue, Kampala. Owing to some disputes, the parties activated the dispute resolution clause in the agreement thereby undergoing arbitration under the Arbitration and Conciliation Act at Centre for Arbitration and Dispute Resolution (CADER). A final award was granted by the three appointed arbitrators on 6<sup>th</sup> August, 2019 in favour of the Applicant.

The Applicant then filed a notice for recognition and enforcement of the arbitral award in this court vide Misc. Application No. 6 of 2020. The parties consented



to the arbitral award made and a notice for recognition and enforcement of this consent was filed by the Applicant and served on the Respondents.

The Applicant through this application seeks for the consent to be recognized and enforced since the thirty days under Section 34(3) of the Arbitration and Conciliation Act for setting aside the award have passed and challenge has been made to the award.

### Representation

At the hearing held on 27/5/2021, the Applicants were represented by Enoth Mugabi, while Muwema & Co. Advocates who represent the Respondents did not enter appearance. The court directed Mr. Mugabi Enoth to write to counsel for the Respondents with a copy to court informing them of the orders as to filing of submissions by court.

This court ordered for parties to file written submissions within the set timelines. However, it has been over nine months since the last deadline for filing submissions and neither party has filed submissions. This court shall therefore determine this matter based on the application and law applicable.

### Resolution

**Issue: Whether the application for recognition of the arbitral award and consent should be granted.**

Section 35 of the Arbitration and Conciliation Act states:

35. Recognition and enforcement of award.

(1) An arbitral award shall be recognised as binding and upon application in writing to the court shall be enforced subject to this section.

(2) Unless the court otherwise orders, the party relying on an arbitral award or applying for its enforcement shall furnish—

(a) the duly authenticated original arbitral award or a duly certified copy of it; and

(b) the original arbitration agreement or a duly certified copy of it.

(3) If the arbitral award or arbitration agreement is not made in the English language, the party shall furnish a duly certified translation of it into the English language.

The duty of the court in such procedures is to verify that there was an arbitral award per an arbitration agreement. The only way the court can do so is by reviewing the original or certified copies of the award and arbitration agreement.

In other words, the court enforces only arbitral awards based on arbitration agreements it knows to be true, verified by way of certification or production of the original copies.

Annexure A1 to the affidavit in support is the Final Award in CAD. ARB No. 53 of 2017 granted by Wilson Keezi, Mohamed Mbabazi, and Eng. Dr. Anania Mbabazi (“the arbitrators/tribunal”). Section 35(2)(a) requires that the parties to an application such as this furnish court with a certified or duly authenticated copy of the arbitral award. Annexure A1 is a photocopy of a copy that bears certification by a Commissioner for Oaths as per Rule 8 & 9 of the Commissioner for Oaths Rules, and the Third Schedule to the Commissioner for Oaths (Advocates) Act, Cap 5.

A certified copy is a duplicate of an original (usually official) document, certified as an exact reproduction usually by the officer responsible for issuing or keeping the original. See **Black’s Law Dictionary, 9<sup>th</sup> Edition**. The purpose of certification of documents is to confirm their authenticity, and this is usually done by the issuing person/entity.

The Applicant, with leave of court produced the original copy of the arbitral award. I have reviewed the original copy vis a vie the photocopy attached as Annexure A1 to the Affidavit in Support and find that Annexure A1 is a true reflection of the original. The Applicant did produce a duly authenticated original arbitration award satisfying the requirement of Section 35(2)(a) of the Arbitration & Conciliation Act. This court is satisfied that the arbitral award the Applicant seeks to have recognized and enforced is an authentic award.

Section 35(2)(b) of the Arbitration and Conciliation Act requires that the original or a certified copy of the arbitration agreement is attached as well. As already stated the rationale for this is that court must satisfy itself as to the existence of bona fide and legal arbitration proceedings to conclusion. The Applicant did not attach an arbitration agreement or even a certified copy of the same to the application.

This court however came across a photocopy of the land sale agreement out of which arbitration commenced on the mother file (that is Arbitration Cause No. 6 of 2020). This is a land sale agreement dated 7<sup>th</sup> December, 2012 between the Applicant (acting through its Managing Director) as the Developer and the 1<sup>st</sup> Respondent (acting through the 2<sup>nd</sup> Respondent, its Managing Director) as the land owner for the development of and sale of land comprised in FRV 331 Folio 13 Plot 34 Elizabeth Avenue, Kampala out of which the 1<sup>st</sup> Respondent possessed a 99-year leasehold interest created on 27<sup>th</sup> November, 2012.

The arbitrators/the tribunal make reference to this same land sale agreement all through the arbitration award. There is no doubt in this court’s mind that the arbitration was commenced under the land sale agreement of 7<sup>th</sup> December,

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2012. Clause 18.4 of that land sale agreement provides where attempts to amicably settle the dispute fail, the dispute would then be resolved by arbitration under the Arbitration and Conciliation Act.

This was the basis of the arbitration that culminated into the arbitration award that the Applicant seeks for this court to recognize. The land sale agreement attached to the mother file is certified as a true copy of the original by a Commissioner for Oaths under Rules 8 & 9 of the Commissioner for Oaths Rules, and the Third Schedule to the Commissioner for Oaths (Advocates) Act. In the circumstances therefore, I find that this suffices

Therefore, in the context of this case, the requirements under Section 35(2) (a) & (b) of the Arbitration and Conciliation Act are met.

This application was also based on Section 36 of the Arbitration and Conciliation Act which provides:

#### 36. Enforcement.

Where the time for making an application to set aside the arbitral award under section 34 has expired, or that application having been made, it has been refused, the award shall be enforced in the same manner as if it were a decree of the court.

Section 34(3) of the Arbitration and Conciliation Act provides that an application to set aside an arbitral award must be made within a month from the date on which the party making the application to set aside the award would have received the arbitral award or if a request had been made under Section 33 the time from which such request would have been disposed of. No request under Section 33 of the Arbitration and Conciliation Act was ever made in this case.

Therefore, an application to set aside the arbitral award would have to be made within a month from the date on which the would be applicant under Section 34 would have received the award. Basing on Section 31(8) of the Arbitration and Conciliation Act, it is presumed that the arbitral award was made and communicated to both sides on 6<sup>th</sup> August, 2019. See also unrebutted evidence in paragraph 3 of the Affidavit in support. Therefore, whichever party desired to set aside the arbitral award had until 6<sup>th</sup> September, 2019 to do so. No application under Section 34 was ever made.


Therefore, under Section 36 of the Arbitration and Conciliation Act, it was expected in law for the arbitral award to be enforced as though it were a court order. In other words, the Applicant was to undertake execution proceedings as is in usual court proceedings. See **Katamba Philip & 3 Others -v- Magala Ronald, Arbitration Cause No. 03 of 2007** at page 14 paragraph 20 of the ruling.



In conclusion therefore:

1. The arbitral award in CAD. ARB No. 53 of 2017 by the Centre for Arbitration and Dispute Resolution dated 6<sup>th</sup> August, 2019 is hereby recognized.
2. A decree hereby issues for the enforcement of the said Arbitral Award mentioned in 1 above.
3. Costs of this application are awarded to the Applicant.

I so order.

  
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**Jeanne Rwakakooko**  
**JUDGE**  
**12/04/2022**

This Ruling was delivered on the 12 day of APRIL, 2022