

5

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION No. 41 OF 2022
(ARISING FROM CIVIL SUIT No. 360 OF 2019)

10

I & M BANK (UGANDA) LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

15

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

20

This application was brought by Notice of Motion under section 98 of the Civil Procedure Act Cap 71, section 33 of the Judicature Act Cap 13, Order 6 Rule 29 and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1 seeking the following orders that:

25

1. Civil Suit No. 360 of 2019 be struck out and or dismissed for being a nullity and barred in law on account of preliminary points of law raised in this application.
2. An order doth issue that the suit abated and be dismissed for failure of the Respondent to take any action for a period of more than two years.
3. Costs of the Application be provided for.

Background

30

This Application is supported by an affidavit of Natalie E. Kironde deponed in paragraphs 1-22, the Head of Legal and Compliance of the Applicant Company, in which the grounds are summarized as follows: -

- 5 I. That the Applicant entered into an agreement with the Respondent dated 28th July, 2010 to receive and remit taxes arising from tax laws, and the Applicant thereafter opened and operated a revenue collection account for purposes of revenue collection, and for onward transmission to Bank of Uganda. That in April, 2021, the Respondent in writing demanded payment of monies amounting to UGX 175,283,319 (Uganda Shillings One Hundred
10 Seventy Five Million Two Hundred Eighty Three Thousand Three Hundred Nineteen only), that were allegedly uncredited by the Applicant.
- 15 II. That subject to the Arbitration Agreement between the parties, the Respondent referred the dispute for arbitration in accordance with the Arbitration and Conciliation Act Cap 4, Laws of Uganda. That the arbitration dispute between the parties was dismissed on the 2nd day of December, 2016 and costs was awarded to the Applicant.
- 20 III. That the Applicant has been advised by their Lawyers M/S Shonubi, Musoke and Co. Advocates, whose advice they verily believe to be true that after the dismissal, the Respondent made no effort to set aside the arbitral award as required by law, and instead filed Civil Suit No. 360 of 2019 on the 3rd day of May, 2019 against the Applicant, and the suit is time barred as it offends the provisions of section 3(1) (a) of the Limitation Act Cap 80.

25 The Respondent opposed this application in an affidavit in reply deponed in paragraphs 1-28 by Tracy Basiima, a Legal Officer of the Respondent and summarized as below:

- I. That the Respondent shall raise preliminary objections that this application is bad in law, brought in bad faith, and an abuse of Court process.
- 30 II. That the Applicant breached this agreement when it neglected to credit or reflect the payments received of UGX 175,283,319 onto the Respondent's account, which resulted in revenue loss of UGX 175,283,319, and the Respondent demanded that the Applicant should pay but the Applicant ignored the demand.
- 35 III. That the Respondent referred the dispute for arbitration in accordance with the Arbitration Agreement, and the Arbitration and Conciliation Act but the arbitration proceedings did not commence and the dispute was not determined on merits. That the Respondent instituted Civil Suit No. 360 of 2019 against the Applicant in time after all the options to commence and proceed with arbitration were explored but frustrated by the Applicant.

- 5 IV. That it is in the interest of justice and the Applicant's interest that this honorable Court exercises its inherent powers, and original unlimited jurisdiction to determine this matter on its merits.
- V. That in the alternative and without prejudice to the foregoing, if this honorable Court is not inclined to hear the matter, it can exercise its
10 discretion to refer the matter to Arbitration for it to be determined on its merits.

Representation

The Applicant was represented by Counsel Nicholas Mwasame of M/S Shonubi, Musoke & Co. Advocates, while the Respondent was represented by Counsel
15 Donald Bakashaba, Legal Services & Board Affairs Department of Uganda Revenue Authority. Counsel for the parties herein filed written submissions as directed by this Court.

Issues for determination

1. Whether the dispute has been determined by Arbitration?
- 20 2. Whether the suit is time barred?

Decision

Issue No.1: Whether the dispute has been determined by Arbitration?

I have considered the evidence adduced by the parties in their respective affidavits, and the submissions of Counsel for the parties herein to find as follows:

- 25 Section 2(1)(d) of the Arbitration and Conciliation Act, Cap 4, (hereinafter referred to as the "Act" defines an arbitral award to mean any award of an arbitral tribunal and includes an interim arbitral award.

It is not in doubt that the parties herein, referred the dispute to arbitration in accordance with the Arbitration Agreement, and the Act.

- 30 The ruling reads:

"... given that this matter has dragged on for this long, I am unable to commence the proceedings in the remaining part of the year due to prior commitments which I cannot cancel. I therefore rule that the claimant has failed to show sufficient interest in pursuing this matter or shown justifiable cause for this
35 unresponsiveness, and hereby terminate this Arbitral process with this dismissal award, within the meaning of section 32(2)(c) and (3) and make orders as follows:

- 5 1. The Arbitral process under CADER Arbitration Case No.08 of 2016 is hereby terminated and the request for arbitration is dismissed.
2. The Claimant shall be condemned to costs..."

For avoidance of doubt, section 32(2)(c), and (3) of the Act is reproduced hereunder:

10 **32. Termination of arbitral proceedings**

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- 15 (a) the claimant withdraws his or her claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his or her part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the arbitral proceedings; or

- 20 (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary. (Emphasis is mine)

(3) Notwithstanding subsection (2)(c), the arbitral tribunal may terminate the arbitral proceedings where there has been an unconscionable delay, on the application of either party or of its own motion.

- 25 In the given circumstances of this matter, it is my understanding that the dismissal of CADER Arbitration Case No.08 of 2016, was an order within the meaning of subsection 2 of section 32 of the Act, and not an award.

For the foregoing reason, this Court finds that no award was made by the Arbitrator as Counsel for the Applicant wants this Court to believe.

Accordingly, this Court finds no merit in the objection.

- 30 The objection raised by Counsel for the Applicant is dismissed.

Its settled law that the Courts will always refer a dispute to arbitration, where there is an arbitration clause in a contract, and the arbitration agreement has been entered into by the parties freely and voluntarily; to depart from it requires sufficient reasons to be shown. **(See National Social Security Fund & Another Vs**

5 ***Alcon International Ltd, CA. Civil Appeal No. 2 of 2008 and Fulgensius Mungereza Vs Price Water House Coopers Africa Central, SC. Civil Appeal No. 18 of 2002)***

10 In accordance with clause 19 of the Arbitration Agreement entered into by the parties herein dated 26th July, 2010, and as mandated by law under the provision of section 98 of the Civil Procedure Act, Cap 71, this Court hereby makes orders as may be necessary for the ends of justice for the parties, that the dispute in Civil Suit 360 of 2019 be referred to Arbitration.

Issue No.2: Whether the suit is time barred?

This Court having found issue (1) above in the negative, further finds that it is unnecessary to delve into this issue.

15 This application is dismissed and Court makes orders that:

1. The dispute between the parties in Civil Suit No. 360 of 2019 be referred to Arbitration.
2. Civil Suit No. 360 of 2019 is dismissed.
3. Costs of this application shall be in the cause.

20 Dated, signed and delivered electronically this 17th day of February, 2023.

SUSAN ABINYO
JUDGE
17/02/2023

25

30