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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION No. 1269 OF 2020
(ARISING FROM ARBITRATION CAUSE No. 11 OF 2020)

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CHRISTIAN COUNSELLING FELLOWSHIP APPLICANT

VERSUS

IBINONGA CONSTRUCTION & GENERAL MERCHANDISE RESPONDENT

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BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

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This application was brought by Chamber Summons under section 12(3) of the Arbitration and Conciliation Act, Cap 4 and Rules 7(1) and 13 of the Arbitration Rules, where the Applicant seeks for orders that:

1. The Arbitral award made in CAD/ARB 3 of 2019, be set aside.
2. Costs of the application be provided for.

Facts

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This Application is supported by the affidavit of Paul Byoma Byabagambi one of the Applicant's Consultants on the project; the subject of arbitration, deponed in paragraphs 1-13, in which the grounds are summarized as follows: -

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- i. That the Arbitrator was appointed by the Executive Director of the Centre for Arbitration and Dispute Resolution in contravention of the Arbitration and Conciliation Act.
- ii. That the Respondent as a party to the Arbitration Agreement was under some incapacity, and that the Arbitration Agreement is not valid under the Laws of Uganda.

- 5 iii. That the award deals with a dispute not contemplated by or falling within
the terms of reference or contains a decision or matters beyond the scope
of reference to arbitration.
- iv. That the award was procured by corruption, fraud or undue means, and
that there is evident partiality or corruption.
- 10 v. That the award is not in accordance with the Arbitration and Conciliation
Act.

The Respondent opposed this application in an affidavit in reply deposed by
Lakica Patrick the Proprietor of the Respondent, in paragraphs 1-19, and
summarised as below:

- 15 i. That he has been advised by their Advocates M/s Ajuu, Baleese, Bazirake
Advocates, which advise he verily believes to be true as follows: -
- ii. That this application is frivolous, vexatious and barred by law, as such it
should be dismissed; that the said Paul Byoma Byabagambi has never been
a consultant on the project subject to Arbitration, and the appointed
20 consultant was Soleco Construction Co. Ltd as seen in a copy of the
appointment letter attached, and marked Annexure "A".
- iii. That the Applicant duly participated in the process of appointment of the
said Arbitrator, and the whole arbitral proceedings, as such they are
estopped from challenging the Arbitrators' appointment.
- 25 iv. That the Applicant has not raised sufficient grounds to set aside the arbitral
award; the affidavit of Paul Byoma Byabagambi is argumentative and
should be struck out.
- v. That the instant application has been filed out of time, and should be
dismissed with costs.

30 Representation

The Applicant was represented by Counsel J.B Byamugisha of M/S J.B Byamugisha
Advocates, while the Respondent was represented by Counsel Munyaneza
Daniel of M/S Ajuu, Balesse, Bazirake Advocates. Counsel for the parties herein,
filed written submissions as directed by the Court.

35 Counsel for the Respondent raised three preliminary objections in their
submissions, which this Court shall resolve before delving into the merits of the
application. The preliminary objections are as follows;

1. That Miscellaneous Application No. 1269 of 2020 arising from Arbitration
Cause No. 11 of 2020 is barred by law, having been filed out of time, and
40 as such should be dismissed with costs.