

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

**MISC. APPLICATION NO.510 OF 2019
[Arising from Misc. Cause No. 171 of 2019]**

**UGANDA REVENUE
AUTHORITY:::APPLICANT**

VERSUS

- 1. REN PUBLISHERS LIMITED**
- 2. MULTIPLEX
LIMITED:::RESPONDENTS**
- 3. UGANDA NATIONAL BUREAU OF STANDARDS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application to add a party to Miscellaneous Cause No. 171 of 2019 brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 1 rule 10(2), Order 52 rules 1 & 3 of the Civil Procedure Rules.

The 1st and 2nd respondent filed Miscellaneous Cause No. 171 of 2019 seeking an Interim measure of protection and preservation to restrain the respondent, its servants, agents or any one acting under its authority, instruction, direction, control or agency from terminating the contract between the 1st respondent and the 3rd respondent, and the sub contract executed between the 1st and 2nd respondents with the consent of the 3rd respondent for the provision of Electronic verification services and supply of electronic tags (UNBS E-tag) by the 1st and 2nd respondents to the 3rd respondent for the verification of standards/quality and detection of counterfeit and substandard products in Uganda, until the hearing and determination of the Arbitration Cause between the Respondents.

The 1st and 2nd respondents further sought an Interim measure of protection and preservation to restrain the 3rd Respondent, its servants, agents or any one acting under its authority, instruction, direction, control or agency stopping any implementation and engagement whatsoever by the 3rd respondent with Uganda Revenue Authority and SICPA SA premised on the contract signed on the 4th April, 2019 between Uganda Revenue Authority, SICPA SA and the 3rd Respondent, in respect of provision of electronic verification of standards/quality services and detection of counterfeit and substandard products in Uganda to wit; the supply, implementation, training, support, maintenance and verification of quality services and safety solutions/digital conformity mark and/or any other related services, until the hearing and determination of the Arbitration Cause between the 1st and 2nd respondents and the 3rd Respondent.

The background to the application is as follows;

1. That on 15th August 2014 the 1st respondent and 3rd respondent signed a five year Memorandum of Understanding for the provision of electronic verification services and supply of electronic tags (UNBS E-tags) by the 1st respondent to the 3rd respondent for the verification of standards and detection of counterfeit and substandard products in Uganda.
2. On 25th May, 2016, the 3rd respondent granted a no objection to the sub contract executed between the 1st respondent, mandating the 1st respondent jointly with the 2nd respondent to purchase and install specialised digital E-tag stamps printing equipment with track and trace capabilities for the implementation of the UNBS E-Tag project for the verification of standards and detection of counterfeit and substandard products in Uganda.
3. That premised on the Memorandum of Understanding, Sub Contract and the No Objection, the 1st and 2nd applicants and the respondent commenced the implementation of the UNBS E-Tag project, and have since partly performed the obligations therein by;
 - a) Acquiring and constructing premises at Plot M799 Spring Road Kampala (UNBS E-tag Hub),

- b) Purchasing and importing brand new specialised digital E-tag stamps printing equipment with track and trace capabilities,
- c) Installation of a specialised centralised call centre at UNBS offices,
- d) Installation of a centralised ICT electronic verification system,
- e) Extracting and maintain a specialised code number 114 from Uganda Communications Commission,
- f) Training personnel and engaging consults from UK and Israel, and
- g) Holding consultative meetings with manufacturers.

4. That during the implementation of the contract by the 1st and 2nd respondents, the Solicitor General on 29th September, 2017 upon the request of the respondent issued a legal opinion to the 3rd respondent stating that any contract or procurement with any other 3rd party during the subsistence of the five (5) year Memorandum of Understanding between the 1st respondent and the 3rd Respondent for any similar services for the verification of standards and/or quality solutions and detection of counterfeits and substandard products in Uganda, is void.
5. The 3rd respondent on 4th April, 2019 signed another similar agreement with Uganda Revenue Authority (applicant) and SICPA SA for the implementation of the digital tax stamp and digital conformity stamp and assigned them services which include; the supply, implementation, training, support, maintenance and verification of quality and safety solutions, which services were already contracted to and performed by the 1st and 2nd respondents.
6. The 1st and 2nd respondents on 8th February, 2018, wrote to the 3rd respondent and referred the dispute between the 1st and 2nd respondent and the 3rd respondent to Arbitration which was prior to the execution of the contract on 4th April 2019 between Uganda Revenue Authority, SICPA SA and the 3rd respondent.

7. The 3rd respondent on 15th February, 2018 acknowledged receipt of the reference to Arbitration but ignored the said reference and went on to sign a contract on 4th April, 2019.
8. The Memorandum of Understanding executed between the 1st respondent and the 3rd respondent, which binds the 2nd respondent as a subcontractor approved by the 3rd respondent provided for arbitration for any dispute, upon written request for reference to Arbitration. But the 3rd respondent has since refused to concur to the reference to arbitration.

The court heard the main cause on 11th July 2019 and set a date for the delivery of the ruling on 2nd August 2019. The applicant on 31st July filed the present application to be added as party on the following grounds;

1. That, in 2018, the applicant entered into a Framework Contract with SICPA SA for the Supply, Implementation, Training, Commissioning and Maintenance of a Digital Tax Stamps Solution.
2. That, in 2019, the applicant executed a First Addendum to the DTS Contract, to expand the scope beyond Digital Tax Stamps and encompass Quality and Safety.
3. That, the parties to the First Addendum are the Applicant (as the Procuring and Disposing Entity) SICPA SA (as the “Provider”) under the First Addendum, the 3rd respondent is designated as the Beneficiary.
4. That, under the First Addendum, the overall contractual responsibility to SICPA fall on the applicant, whilst the 3rd Respondent is only a beneficiary.
5. That, under the First Addendum, the implementation of the Quality and Safety scope is the Mandate of the 3rd Respondent and start on or after 16th August 2019.
6. That, the applicant learnt that the 1st and 2nd respondent filed Miscellaneous Cause 171 of 2019 against the 3rd respondent, seeking orders stopping any

implementation and engagement whatsoever by the 3rd respondent with the applicant and SICPA SA.

7. That the orders sought to stop the implementation of the Quality and Safety Scope of DTS Contract, would affect the applicant, as the primary obligor under the First Addendum to the DTS Contract.
8. That the applicant is not a party to the main cause and has not been heard and it would occasion injustice upon the applicant if the orders sought are granted without being afforded the opportunity to be heard.
9. That the addition of the 3rd respondent as a beneficiary to the contract between the Applicant and SICPA SA was a Presidential Directive which is purportedly being indirectly challenged by the 1st and the 2nd Respondents, which is legally untenable.
10. That, the addition of the applicant will enable the Court to effectually and completely adjudicate and determine all the issues involved in the suit.

The 1st and 3rd respondent opposed the application by filing an affidavit in Reply by Ronnie Nganwa while the 3rd respondent did not oppose the application.

1. The 1st and 2nd respondents contended that the applicant is not a party to the Memorandum of Understanding executed between the 1st and 3rd respondent, the subcontract between the 1st respondent and the 2nd respondent and the No Objection issued by the 3rd respondent to the 1st and 2nd respondents.
2. That Miscellaneous Cause filed by the 1st and 2nd respondents against the 3rd Respondents arises from the Pending Arbitration proceedings between the 1st and 2nd respondents against the 3rd Respondent, in which the Applicant is not a party.
3. That the pending Arbitration proceedings are founded upon a dispute between the 1st and 2nd respondents against the 3rd respondent, which dispute was referred to Arbitration by virtue of the Memorandum of Understanding.

4. That Miscellaneous Cause No. 171 of 2019 is premised on the Arbitration and Conciliation Act and the Applicants in that Cause are not privy to the framework Contract (DTS Contract) and the First Addendum to the Framework Contract (DTS Contract) executed between the Applicant and the 3rd respondent.

The applicant was represented by *George Okello* and the 1st and 2nd respondents were represented by *Magezi Tom* and *Aritha Uwera* and the 3rd respondent by *Ntale Alex*.

The applicant's counsel submitted that the Applicant entered into a Framework Contract with SICPA SA for the Supply, Implementation, Training, Commissioning and Maintenance of a Digital Tax Stamps Solution.

The applicant received a Presidential Directive from the Ministry of Finance that required the broadening of the Contract to encompass quality control by bringing on board Uganda National Bureau of Standards. That, in 2019, the applicant executed a First Addendum to the DTS Contract, to expand the scope beyond Digital Tax Stamps and encompass Quality and Safety.

That the main application seeks to stop the implementation of the terms of the contract between the Applicant and SICPA and UNBS and the prayers sought directly affect the applicant and if granted without it being added as a party they would have been denied a right to a fair hearing.

According to counsel for the applicant, the applicant can be joined under Order 1 rule 10(2) of the Civil Procedure Rules since the determination of the main cause without the applicant's involvement will without doubt affect the applicant's interests even though he is not a party.

The application is pursued in a manner that would make it appear that the applicant is a party to the arbitration proceedings. The applicant wishes to appear in court and take part in the proceedings.

The 1st and 2nd respondents counsel submitted that the Main Cause was brought under Section 6 of the Arbitration Act and the procedure is unique in nature. The applicant is not a party to the Arbitration agreement, this therefore means that the applicant cannot take part in the proceedings brought under section 6 of the Arbitration and Conciliation Act.

He further contended that section 9 of the Arbitration and Conciliation Act limits the interference of court in such instances. Therefore this court has no jurisdiction to add the applicant as a party to proceedings that have been commenced under the Arbitration and Conciliation Act.

The Arbitration proceedings are a creature of contract and therefore any purported attempt to add a party to the proceeding under Miscellaneous Cause 171 of 2019 would amount to trying to amend the Memorandum of Understanding for which the applicant is not a party.

The applicant's counsel in rejoinder contended that this court has jurisdiction since the applicant only wants to be joined in the Miscellaneous Cause 171 of 2019 which is pending before this court and not the arbitration proceedings between the 1st and 2nd respondents and 3rd respondents.

It was his contention that Miscellaneous Cause is a suit in its own right and the applicant as a non-party to the arbitration can participate in the suit and the protection sought is to protect its interests and nothing more.

That applicant being a non-party to the Memorandum of Understanding, does not wish to join the arbitration proceedings but rather the present proceedings before the High Court seeking orders which if granted would adversely affect them.

That this matter presents a classical scenario where the court is enjoined to allow a non-party to a suit to join the same so long as it would enable court effectually and completely adjudicate and settle all matters and questions in issue.

Determination

It is in the interest of natural justice and the efficiency of litigation (including, in particular, expedition, proper expenditure and legitimate use of resources, effective adjudication and consistent outcomes), that all sufficiently connected disputes between the parties should be determined in the course of a single set of proceedings, and that all persons are appropriately interested in the litigation should be joined in the suit.

If it is impractical or impossible to include interested persons as parties, then it may be just for them to be represented or permitted to intervene in certain circumstances, or at least be notified of the litigation.

As a general rule, proceedings under the Civil Procedure Rules require that all the appropriate parties should be involved in the proceedings so that there may be proper and complete determination of all issues and comprehensive adjudication of all affected interests.

The thrust of the rules is to ensure all persons with recognizable interest be brought before the court. To that extent that any person cannot be made a party, various mechanisms are available to ensure that he is represented or given an opportunity to be heard in a non-party capacity.

Therefore it is true that the court has an inherent power to allow the involvement of a non-party if this is clearly just in all circumstances of the case.

The nature of proceedings before this court is a special procedure emanating from the Arbitration and Conciliation Act, which is specifically and strictly for granting some interim or emergency reliefs pending the Arbitral proceedings.

Section 9 of the Arbitration and Conciliation Act provides;

“Except as provided in this Act, no court shall intervene in matters governed by this Act”

This court is only enjoined to grant interim measure of protection as directed by section 6 of the Arbitration and Conciliation Act. The court cannot use such restricted powers of intervention to allow applications of whatever nature that would change the nature of Arbitral proceedings or impact on the arbitration between the parties to an arbitration agreement.

The court should not intervene in arbitration. The philosophy is that where parties have agreed that their dispute should be resolved by arbitration the court should not interfere except and to the extent that it is necessary.

The principle of non-intervention is to support the implementation of the party's decision to refer the dispute to arbitration. If the courts were too ready to intervene much of the value in arbitrating as opposed to litigation would be lost.

The application for interim protection originates from the memorandum of understanding which contains a clause allowing arbitration of any disputes between the parties. Any attempt under the guise of adding the applicant would be to invite the applicant to take part in the arbitral proceedings and yet he not a party to the Memorandum of Understanding between the 1st and 2nd respondent and the 3rd

respondent. *See Usafi Market Vendors Association v Kampala Capital City Authority High Court Miscellaneous Application No. 647 of 2018*

The applicant's counsel argument that this Miscellaneous Cause is an independent suit for which the applicant can be joined under Order 1 rule 10(2) of the Civil Procedure Rules is fallacious.

The court cannot grant an interim measure of protection or injunction within the meaning of the Arbitration and Conciliation Act if the parties to the court proceedings are not the parties, or persons claiming through or under a party, to arbitration agreement. *See City of London v Sancheti [2009] Bus. L.R. 996.*

For a stay or injunction or interim measure of protection to be granted both parties in litigation have to be parties to the arbitration agreement. It is not enough if one or other of the parties to litigation has a mere commercial connection with one of the parties to the arbitration agreement.

This application fails and is dismissed with costs to the 1st and 2nd respondents.

I So Order

SSEKAANA MUSA

JUDGE

05th/08/2019