

1 **THE REPUBLIC OF UGANDA**
2 **IN THE HIGH COURT OF UGANDA AT MUKONO**
3 **MISC.APPLICATION NO.250 OF 2019**
4 **ARISING FROM MA NO.198/2019**
5 **ARISING FROM CIVIL APPLICATION NO.197 OF 2019**
6 **ARISING FROM CIVIL APPLICATION NO.007 OF 2019**
7 **ARISING FROM CAD/ARR NO.47 OF 2018**
8 **IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW SEEKING**
9 **ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION AND OTHER**
10 **REMEDIES**
11 **GLOBAL INDUSTRIES:..... APPLICANT**
12 **VERSUS**
13 **TRIDENT INFRATECH LIMITED:.....RESPONDENT**
14 **06th September 2019**
15 **BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**
16 **RULING**

17 1. This Ruling is in respect of an Application by way of Notice of Motion brought under
18 section 98 of the CPA and 0.52 rules 1, 2 and 3 of the Civil Procedure Rules.

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20 The Application seeks orders of Court to;

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22 (a) Lift the ban issued in the Interim Order dated 15th July 2019 and

23 (b) That the Interim Order of stay of execution of the Orders of the arbitration CAD/ARB
24 No.47/2018 do issue pending the determination of the main Application and that costs
25 be in the cause.

26 The grounds in support of this Application are contained in the Affidavit of Rajiv
27 Sabharwal, the Director of Global Wire Industries, the Applicant but briefly are the
28 following:-

- 29 1. That the Applicant filed a substantive Application No.197 of 2019 against the
30 Respondent seeking for stay of Execution of Orders in arbitration CAD/ARB/47 of
31 2018.
- 32 2. The Applicant then filed Misc. Application No.198 of 2019 against the Respondent
33 seeking for interim stay of execution pending hearing and determination of the
34 substantive Application for stay.
- 35 3. That upon hearing of the Misc. Application for the two Interim Stay of Executions,
36 Court among other Orders issued a ban against the Applicant blocking its officers
37 from accessing the premises or removing goods from therein.

38 The Court further ordered private security guards and padlocks to be put on the
39 Applicant's warehouse premises and that at all these orders would only be lifted upon
40 furnishing security to court.

- 41 4. That the Applicant has already deposited security of Ug. Shs.10,000,000/= in court.
- 42 5. That the Applicant has surrendered machines within the guarded warehouse premises
43 valued at Ug. Shs.858,200,000/= [Ug. Shs. Eight Hundred Fifty Eight Million, Two
44 Hundred Thousand only), which is sufficient to secure the Respondent's claim even
45 while in operation in the hands of the Applicant for the next five years.
- 46 6. That the raw materials and the finished goods within the warehouse are getting
47 wasted if the ban issued in the Interim Order dated 15th of July 2019 is not lifted, the
48 Applicant will suffer irreparable loss.
- 49 7. That by the time the substantive Application is heard and determined, the Applicant
50 would have suffered serious loss and damage of the finished goods and the raw
51 materials that are apparently getting wasted in the warehouse.

52 8. That the said substantive Application fixed has a high probability of success and that
53 the Applicant will suffer greatly if the ban is not lifted.

54 Lastly that it is in the interest of justice and fairness that the Order of Interim stay of
55 execution and other orders sought be granted.

56

57 2. Global Wire Industries, the Applicant was represented by Counsel Bwire Walter while
58 Counsel Dan Busingye represented Trident Infratech Ltd, the Respondent.

59

60 They both made oral submissions in support of their respective client's cases.

61

62 Counsel Bwire submitted that the Applicant applied to this court to stay execution
63 following an arbitral award that was issued against it as it was deponed in paragraph 3 of
64 the Affidavit in support.

65

66 Instead of court maintaining the status quo, it changed it by issuing a ban as deposed in
67 paragraph 4.

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69 That the Order changed the status quo and has greatly inconvenienced the Applicant.

70

71 That it is a sign or form of execution of the Arbitral award as it has attached the
72 Applicants property and put them out of business, for the last two months.

73 That the Order is causing a substantial loss as deponed in paragraph 8.

74 Counsel submitted that at the time the Order was issued, the Applicant was operating
75 normally and had finished goods and raw materials.

76

77 The Applicant attached Annexures CI and C10 in support and proof of his case.

78 The employees, he submitted, have been put out of employment and that both parties are
79 out of business. Since none can get in and go out of the premises.

80

81 He submitted that if the Order is not granted, the Applicant will suffer loss, and damage
82 irreparable.

83

84 He prayed that the court lifts the ban and set aside the Order to pave way for the
85 Applicant to resume business operations and have an order maintaining the status quo
86 after access is given.

87

88 Counsel Dan Busingye in opposition, submitted, that the Affidavit of Ramesh Halai filed
89 on 8th August 2019 opposes the Application.

90

91 He submitted that the status quo was that by the time the Applicant came to court, for
92 stay of execution of the award, the Respondent had locked out the Applicant for failure to
93 pay rent for the last 18 months.

94 That was explained to court by the Director of the Applicant leading to the Interim Order.

95

96 It is on that point that the Respondent is only interested in business whereas the Applicant
97 should pay the rent that is due as per the award that is being challenged.

98

99 The rent in question is not being disputed by the Applicant. The Respondent would
100 therefore pray that this court be pleased to issue the appropriate security from the
101 Applicant, so that business can go on for both parties, and thereon justice can be seen to
102 be done.

103

104 This court is empowered to grant security under section 34 (5) of the Arbitration and
105 Conciliation Act, Rules 7 (1), (12) and (13) which empower court to order for appropriate
106 security if any one challenges the award.

107 He referred court to the case of **Excel Construction Ltd Versus G.CC Services (U) Ltd**
108 **Misc. Cause No.156 of 2017 Commercial Division** of the High Court where Justice B.
109 Kainamwa (Rtd) ordered the respondent not later than 30 days from today to deposit in
110 court such security e.g. irrevocable bank guarantee or other security acceptable to the
111 Applicant for the due performance of the entire award.

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He also relied on the case of **Dr. Alfred Otieno Odhiambo Versus Medus Prof S-BV** MA No.52 of 2019, Arising from MA 995/2018, Arising from MA 947/2018, Arising from CAD/ARB No.4/2017, Arising from **CAD/ARB No.36/2016.**

Justice Richard Wejuli revised downwards the security for costs that had been set at 240,000 Euros to 160,000 Euros.

He further relied on the authority of **G.M. combined (U) Ltd Versus AK Detergents (U) Ltd.**

SCCA No.34 of 1995 where the Supreme Court held that **“The amount of security awarded is the discretion of the court which will fix such sum as it thinks just, having regard to all the circumstances of the case. It is not the practice to order security on a full indemnity basis. The more conventional approach is to fix the sum at about two thirds of the estimated party and party costs up to the stage of the proceedings for which security is ordered, but there is no hard and fast rule...”**

He prayed that this being a Landlord-Tenant relationship gone sour, the Respondent is only interested in his rent, prior to 18 months and the subsequent months.

He submitted, what was due now was about 60,000 US Dollars.

He prayed that court be guided to exercise its discretion judiciously to protect all parties.

In rejoinder, Counsel for the Applicant submitted that the status quo was that the Applicant was operating and was never evicted.

That on the issue of security, he agrees it is at the discretion of court and already the Applicant has deposited Ug. Shs.10,000,000/= (Uganda Shillings Ten Million) and relied on the case of **John Baptist Kawanga Versus Namyalo Kevina and Ssemakula**

143 **Lawrence.** MA No.12/2017 Arising from CS No.51/2012 where Justice Flavia Zeija
144 held the view on Applicant giving security for due performance, “ **that every**
145 **Application should be handled on its merits and a decision whether or not to order**
146 **for security for due performance be made according to the circumstances of each**
147 **particular case”.**

148

149 **3. Brief Background**

150

151 Before evaluating the Affidavit evidence and the submissions of both Counsel, it is
152 important to bring out the brief facts of this case as court finds the Applications peculiar.

153

154 In the year 2018, the Applicant Global Wire Industries Ltd filed Civil Suit No.0057 f
155 2018 against Trident Infratech Lt Ramesh Halai and Dinesh Halai. The Applicant also
156 filed Miscellaneous Application No.27/18 arising out of the above mentioned Civil Suit.

157

158 The learned Ag. Chief Magistrate Juliet Hatanga made an Order dated 23rd July 2018 to
159 the effect that “**Civil Suit No.57 of 2018 and Misc. Application No.27 of 2018 be**
160 **referred for Arbitration in line with clause x of the Tenancy Agreement between the**
161 **parties and in line with section 5 of the Arbitration and conciliation Act CAP 4”.**

162

163 The Respondent Trident Infratech Ltd through its Lawyers Muhumuza Kiiza Advocates
164 and Legal Consultants went ahead and opened arbitration proceedings vide CAD/ARB
165 No.47/2018 against the Applicants Global Wire Industries Ltd.

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167 The chamber summons were dated 27th September 2018 supported by Ramesh Halai the
168 Director of the Respondent Company.

169

170 The Agreement that was attached to the Affidavit between the Applicant and Respondent
171 on 1st July 2017 indeed had clause X which was in the following words;

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173 **“Any dispute arising in connection with this Agreement, which cannot be solved**
174 **amicably within (30) days after receipt by one party’s request, shall be referred to**
175 **an Arbitrator appointed by both parties in accordance with Arbitration and**
176 **conciliation Act CAP 4 and if the dispute is not resolved, then the matter shall be**
177 **referred to court of competent jurisdiction.**

178
179 **The place of arbitration shall be Kampala, Uganda and the language to be used**
180 **shall be English.**

181
182 **The arbitral award shall be reasoned and in writing, each party shall initially bear**
183 **their own costs of arbitration and shall share the costs of the arbitrator.**

184
185 **The arbitrator may allocate or apportion costs between the parties”.**

186
187 The Agreement was signed by both parties, and the Applicant, Global Wire Industries
188 Ltd signed this Agreement through its director Rajiv Sabharwal who is not disputing the
189 Agreement.

190
191 The parties went ahead and signed a Party undertaking where in whatever they agreed on
192 in their first Meeting that was held on 20th February 2019 with the Arbitrator was reduced
193 into writing.

194
195 This undertaking was duly signed by Messrs Muhumuza Kiiza Advocates and Legal
196 Consultants for the claimant and M/S Songoni and Co. Advocates for the Respondent.
197 Under the undertaking, they put the time table of proceedings before the arbitrator.

198
199 The parties also filed a Joint scheduling memorandum on 18th March 2019 and the
200 arbitrator proceeded with the arbitration to determine whether there was a breach of the
201 Tenancy Agreement by either the claimant or the Respondent and what remedies were
202 available to the parties.

203

204 The arbitrator eventually made an award that was reasoned and in writing as per the
205 Tenancy Agreement Clause X dated 24th June 2019. The arbitrator was Fred Businge
206 Kiiza.

207

208 **The claimant/Respondent was awarded;**

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210 (1) USD 44,240 in rent arrears as at 30th March 2019.

211 (2) Ug. Shs.34,516.18/= (Thirty Four Thousand Five Hundred and Sixteen Eighteen
212 Cents) in outstanding electricity bills as at 11th September 2017.

213 (3) A total of Ug. Shs.1,021,316/= (Uganda Shillings One Million, Twenty One
214 Thousand, Three Hundred Sixteen) as outstanding water bills as at 20th August 2018.

215 (4) Interest on items (1) and (3) above at the rate of 12% per annum from the date of
216 filing the claim until payment in full.

217 (5) A total of USD 20,000 (Twenty Thousand US Dollars) as reasonable in the
218 circumstances to help the claimant carry out reasonable and necessary repairs.

219 (6) The Respondent vacates the suit premises within 2 (weeks from the date of the
220 award).

221 (7) The counter claim is hereby dismissed.

222 (8) Each party shall bear its own costs of the Arbitration...”

223 Being dissatisfied with the award, the Applicant filed a Notice of Motion under sections
224 36, 33 of the Judicature Act CAP 13 and section 98 of the Civil Procedure Act, 0.46 rules
225 2, of the CPR, and Rules 6, 7, 8 of the Judicature (Judicial Review) Rules No.11 of 2009
226 seeking for Judicial reliefs of Certiorari, mandamus, Prohibition Vide Civil Application
227 No.07/2019, which has attracted a plethora of other Applications including, this one.

228 **It is apparent that the Applicant by executing the Agreement dated 1st July 2017,**
229 **signing the party undertaking under CAD/ARB No.47 of 2018 and participating in**
230 **the proceedings in CADER fully submitted to the arbitration process.**

231 **The dispute between the two parties is therefore governed or regulated by the**
232 **provisions of the Arbitration and conciliation Act CA.4, Laws of Uganda.**

233 What does the law provide for instances where a party is not satisfied with the award?

234 Section 34 provides for an Application for setting aside arbitration award as follows:

235 Section 34 **“Application for setting aside arbitral award”**.

236 **(1) “Recourse to the court against an arbitral award may be made only by an**
237 **Application for setting aside the award under subsections (2) and (3).**

238 **(2) An arbitral award may be set aside by the Court only if (a) the party making the**
239 **Application furnishes proof that;**

240 **(i) A party to the arbitration Agreement was under some incapacity.**

241 **(ii) The arbitration Agreement is not valid under the law to which the parties**
242 **have subjected it or, if there is no indication of the law, the law of**
243 **Uganda.**

244 **(iii) The party making the Application was not given proper notice of the**
245 **appointment of an arbitrator or of the arbitral proceedings or was unable**
246 **to present his or her case.**

247 **(iv) The arbitral award deals with a dispute not contemplated by or not**
248 **falling within the terms of the reference to arbitration except that if the**
249 **decisions on matters referred to arbitration can be separated from those**
250 **not so referred, only that part of the arbitral award which contains**
251 **decisions on matters not referred to arbitration may be set aside.**

252 **(v) The composition of the arbitral tribunal or the arbitral procedure was**
253 **not in accordance with the Agreement of the parties unless that**
254 **Agreement was in conflict with a provision of this Act from which the**
255 **parties cannot derogate or in the absence of an Agreement, was not in**
256 **accordance with this Act.**

257 **(vi) The arbitral award was procured by corruption, fraud, or undue means**
258 **or there was evident partiality or corruption in one or more of the**
259 **arbitrators or**

260 **(vii) The arbitral award is not in accordance with the Act (b) the court finds**
261 **that:-**

262 (i) The subject matter of the dispute is not capable of settlement by
263 arbitration under the law of Uganda; or

264 (ii) The award is in conflict with the Public Policy of Uganda.
265

266 3. An Application for setting aside the arbitral award may not be made after one month
267 has elapsed from the date on which the party making that Application had received the
268 arbitral award or if a request had been made under section 33 from the date on which that
269 request had been disposed of by the arbitral award”.

270
271 It is important to note that Arbitration is created by contract and depends upon the free
272 choice of the parties for the resolution of their disputes by a particular process or an
273 expert/arbitrator rather than the submission to the prevailing judicial system in resolving
274 disputes.

275
276 This free chance however is not completely free of involvement with the Courts of law in
277 the country if the awards are not paid promptly by the losing party or one party is
278 dissatisfied with the award.

279
280 The procedure of resorting to the Courts of law is well laid under the Arbitration and
281 Conciliation Act and Rules. Sections 34 (supra) 35, 36 and 38 are very specific.

282
283 **Section 35 of the ACA provides that;**

284 (1) **“Arbitral award shall be recognized as binding and upon Application in writing**
285 **to the Court (emphasis mine) shall be enforced subject to this section.**

286 (2) **Unless the Court otherwise Orders the party relying on an arbitral award or**
287 **applying for its enforcement shall furnish;**

288 (a) **The duly authenticated original arbitral award or a duly certified copy of it**
289 **and**

290 (b) **The original arbitration Agreement or a duly certified copy of it”.**

291 The import of section 35 of the ACA is to allow the parties, to an arbitration cause to bring it to
292 the attention of court particularly the successful party who wishes to have it enforced.

293 Section 36 provides for enforcement as follows:

294 **“Where the time for making an Application to set aside the arbitral award under section 34**
295 **has expired, r that Application having been made, it has been refused; the award shall be**
296 **enforced in the same manner as if it were a decree of the court”.**

297 The successful claimant should therefore apply to court for the execution of the award and in this
298 case, to the execution and Bailiffs Division of the High Court.

299 This is where all Applications//Orders pertaining to depositing security for costs/and or stay of
300 execution should be heard and made.

301 Perusal of the pleadings in all the Applications arising from the Arbitration Cause in contention
302 do not show anywhere that the Respondent followed this process.

303 It is apparent that the Respondent followed the crude method of using his own means of
304 execution by forcing the Applicant out of the rented premises with the help of Police without
305 following the provisions of the law on enforcement under the ACA.

306 No wonder, the learned Deputy Registrar who seemed to be ignorant of the law made Orders that
307 are akin to a draw in a football match by ordering both sides to put padlocks and keep the
308 security of the place changing the status quo completely.

309 The status quo prevailing must be looked at within the context of the law before a formal
310 execution of the award. Status quo was therefore as at the time of the award.

311 Needless to mention, the misapprehension of the law by the parties and their Counsel and the
312 learned Deputy Registrar has wasted a lot of time for the parties and court and as a result
313 attracted a plethora of a Applications turning the would be expeditious dispute resolution process
314 into a very protracted trial which in my view deserves direction and guidance from this
315 honourable court being a Court of record, not from the perspective of having unlimited
316 jurisdiction, because its jurisdiction is limited within the context of the Arbitration and
317 conciliation Act Section 9.

318 **In my humble view, once the parties in their contract executed on 1st July 2017 agreed to**
319 **have their disputes resolved by Arbitration, both of them must follows the law and rules**

320 **there under that govern arbitration proceedings right from the manifestation of a dispute,**
321 **and through-out the whole dispute resolution process under the Arbitration and**
322 **Conciliation Act CAP 4.**

323 The Applicant and his Counsel were the first to act in breach when the matter was first filed
324 before the Chief Magistrate’s Court, Mukono.

325 The Respondent followed by not following the process of enforcement of the award after it was
326 granted abandoning the provisions of the law on enforcing an execution. And now the Applicant
327 and his Counsel again through the many Applications before court.

328 Both parties are estopped from avoiding the well laid down procedures under the ACA.

329 My humble opinion on seeking remedies under Judicial review like in the instant case would
330 frustrate the basic purpose of arbitration to resolve disputes expeditiously and to avoid the
331 expense and delay of extended court proceedings.

332 In my view involvement of Courts of Law in arbitration proceedings should only be in respect of
333 ascertaining the fairness and propriety of the proceedings as stipulated under sections 34 (1) and
334 2 and section 36 and 38 of the ACA.

335 Section 38 provides for questions of law arising in domestic arbitration as follows:-

336 **38 (1) “wherein the case of arbitration, the parties have agreed that:**

337 **(a) An application by any party be made to a court to determine any question of law**
338 **arising in the cause of the arbitration or**

339 **(b) An Appeal by any party may be made to a court on any question of law arising out**
340 **of the award, the Application or Appeal as the case may be made to the court and**
341 **court remains High Court under section 2 of interpretation”.**

342 Perusal of the files before this Court has not revealed any questions of law that have been agreed
343 upon by both parties for Court’s determination.

344 In a strange move by the Centre for Arbitration and Dispute Resolution (CADER) to counter
345 Civil Revision Application No.007 of 2019, erroneously filed in Mukono High Court, they also

346 filed MA No.197/2019 expressing an interest to defend Civil Revision Application No.007/2019
347 and moving Court to grant Orders that questions be framed and referred to the Constitutional
348 Court for determination. Court finds this move very absurd.

349 In my humble opinion all this is a consequence of misapprehension of the law pertaining to
350 arbitration by the parties involved and this court is not about to engage in mental gymnastics on
351 issues that are filed erroneously before this court.

352 My opinion is premised on section 9 of the Arbitration and conciliation Act which provides that
353 **“Except as provided in this Act, no Court shall interfere in the matters governed by this**
354 **Act”**.

355 Justice Egonda Ntende JA in the case of **Babcon Uganda Ltd Vs Mbale Resort Hotel Ltd CA**
356 **No.87/2011** while considering the provision of section 9, posed a question which he answered in
357 the affirmative.

358 **“Does section 9 of the ACA oust the jurisdiction of Courts, except as provided by the ACA**
359 **in respect of matters that are now governed by the ACA?**
360

361 **Justice Egonda Ntende JA went ahead to hold that, the law has chosen to reinforce**
362 **freedom of contract and allow the parties or one of the parties enforce an existing**
363 **arbitration agreement as the only made available to the parties to solve their disputes and**
364 **to that extent oust the jurisdiction of the courts to entertain such a dispute”**.

365 This Court is bound by the decision of the Court of Appeal which is very clear. Section 9 of the
366 ACA outs the general unlimited jurisdiction of the High Court in arbitration matters.

367 This Court also considered the Arbitration Rules. Rule 2 and 3 provide as follows:

368 **Rule 2. “An award may be filed or registered in the Court by a party with the Registrar of**
369 **the High Court or in the District Registry of the High Court within the local limits of which**
370 **the arbitration has been held.**

371 **Rule 3 “An award on being filed or registered shall be given its serial number in the civil list**
372 **and all subsequent proceedings in connection with it shall be similarly numbered”**

373 The Tenancy Agreement was very clear in the Arbitration clause X. Arbitration was to be held
374 from Kampala District and the Court within the Local limits of arbitration in this case is the
375 Commercial Division of the High Court.

376 The Award should have been registered with the Commercial Division and all proceedings
377 connected thereto filed in that court.

378 I doubt if this was done by any of the parties.

379 Having said the above, was the Application before the Deputy Registrar Her Worship Cissy
380 Mudhasi competent?

381 Are the remedies under the Application for Judicial Review available to the Applicant?

382 In view of the established principle and interpretation of the law that section 9 of the ACA
383 ousted jurisdiction of the High Court except as provided in the Act, the Applicant abused the
384 legal process while expressing his dissatisfaction with the Arbitral award as he could not
385 Approbate and Reprobate the arbitration process.

386 The learned Deputy Registrar had no jurisdiction to entertain an Application brought under
387 section 98 of the CPA in respect of an arbitral award as the law specifically provides for the
388 procedure where one is aggrieved and for enforcement.

389 Secondly, it is trite law that Judicial Review is not concerned with the decision in issue perse but
390 with the decision making process. Judicial Review is concerned with prerogative orders which
391 are basically remedies for the control of the exercise of power by those in Public offices.

392 They are not aimed at providing a final determination of private rights which is done in normal
393 civil suits. The said Orders are discretionary in nature and court is at liberty to refuse to grant
394 any of them if it thinks fit to do so even depending on the circumstances of the case where there
395 had been clear violation of the principle of natural justice (Ref to case of **Ignatius Loyola**
396 **Malungu Vs 199 MC No.059/2016**).

397 Certainly the issue between the parties does not fall under the ambit of judicial Review.

398 Departure from the provision of the Arbitration and Conciliation Act by both parties and their
399 Counsel has rendered all proceedings before this Court incompetent.

400 I agree with the authorities cited by both Counsel on the principle but they were quoted out of
401 context as facts before this court are very different. In those cases, Court was dealing with cases
402 brought before it under the provision of the Arbitration and Conciliation Act which is different in
403 the Applications before this Court. The ideal procedure the Applicant ought to have followed is
404 provided for under the Arbitration rules 7 (1) which provides;

405 **“Any party who objects to an award filed or registered in court may within ninety days**
406 **after the notice of the filing of the award has been served upon that party, apply for the**
407 **award to be set aside and lodge his or her objections to it, together with necessary copies**
408 **and fees for serving them upon the other parties interested”.**

409 **(2)“The parties on whom the objections are served may within 14 days after the date of**
410 **service of the objections, lodge cross objections which shall be served on the original**
411 **objector”.**

412 As earlier mentioned, the successful party at CADER now Respondent did not follow the
413 provisions of the law by causing the filing or registration of the award with the High Court for
414 purposes of enforcement by seeking for its execution. It is apparent that CADER does not
415 enforce its awards. It is the High Court to enforce the awards as if it is treated as a decree of
416 court.

417 Had the Respondent Trident Infratech Ltd followed the procedure under ACA, the Applicant
418 global Wire Ltd would have (90) ninety days within which to lodge an Application to have the
419 award set aside if it has grounds that are clearly stipulated under section 34 (2) which has seven
420 (7) grounds (supra).

421 It is therefore important that after the award, the successful party adheres to the law under the
422 ACA specifically to

423 (1) Have the award certified.

424 (2) Have it registered before the Registry of the High Court within the local limits of the
425 Arbitration and

426 (3) Have it officially served on the party against whom the award was made.

427 This is important because under section 34 (3) of the ACA, an Application for setting aside the
428 arbitral award may not be made after one month has elapsed from the date on which the party
429 making that Application had received the arbitral award or if a request had been made under
430 section 33 from the date on which that request had been disposed of by the arbitral award.

431 If the party does not comply with the order amicably then enforcement/execution proceedings
432 should follow).

433 Needless to mention, I find the current provisions under the ACA very unambiguous that even a
434 lay person can easily comprehend the procedure involved in the arbitration process.

435 I have therefore failed to fathom out the reason behind all these erroneous procedures adopted by
436 both parties inspite of having learned Counsel involvement in the matter right from the Chief
437 Magistrate's Court until now.

438 Ramesh Halai in his Affidavit dated 31st July 2019 paragraph 21 stated **“that after the**
439 **Applicants became aware of the content of the award in arbitration, they started removing**
440 **their equipment from the 1st Respondent's premises which equipment constitutes the only**
441 **known assets of the Applicants”.**

442 He did not attach any evidence of the official notification and service of the award upon the
443 Applicant.

444 Further under paragraph 5 of his Affidavit in reply to this Application, he stated;

445 **“That the 1st Respondent locked up the premises and denied the Applicant access with the**
446 **supervision of the District Police Commander (DPC) Mukono and LC1 Chairperson**
447 **Kiwanga until the Applicant pays rent”.**

448 And in paragraph 6, **“that this Honourable court confirmed the status quo from the parties**
449 **in MA 198/2019 and maintained it that the Applicant stays away”.**

450 In essence, Court/Deputy Registrar endorsed an illegal process as locking of the premises with
451 the help of the DPC Mukono was not supported by any warrant from Court.

452 **Decision of Court**

453 In conclusion of this matter, I hold that;

454 (1) Both parties have acted in breach of the Arbitration and Conciliation Act CAP 4, Laws
455 of Uganda.

456 (2) The Interim Order issued by the Deputy Registrar dated 15th July 2019 is incompetent,
457 null and void, and is hereby set aside.

458 (3) All Applications filed in this Court between the parties and or any other person(s) arising
459 out of Arbitration Cause No. CAD/ARB/47/2018 are declared incompetent as they were
460 filed in breach of the ACA.

461 (4) The parties are directed to pursue their remedies in accordance with Provisions of the
462 Arbitration and Conciliation Act ACP 4.

463 (5) It follows that the status quo prevailing at the time of the award should be restored.

464 (6) No order is made as to costs.

465 Dated this 6th day of **September 2019**.

466

467

468 _____
Margaret Mutonyi

469 **RESIDENT JUDGE**