

THE REPUBLIC OF UGANDA
THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
(CADER)

CAD/ARB/ NO.12 OF 2014

DELTA INDUSTRIAL EQUIPMENT LTD APPLICANT

VERSUS

UCHUMI SUPERMARKETS LIMITED RESPONDENT

RULING

The parties executed the Memorandum of Sale on 5th December 2013.

The dispute resolution clause reads as follows,

“12. ARBITRATION:

If any dispute or difference shall arise between the parties concerning this agreement and the parties are unable to resolve it by negotiation, it shall be referred to Centre for Arbitration and Dispute Resolution (CADER) under the Conciliation and Arbitration Act CAP 4 Laws of Uganda.”

The Affidavit of Service deposed by Ocitti Samuel evidences that the Chamber Summons Application was served upon the Respondent. For this reason the matter proceeded *ex parte*.

The Affidavit in support of the Application deposed by Islam Abou-Zid evidences that notice to refer the matter to arbitration was given on 29th

May 2014 through two letters, respectively titled “*Demand Note/Notice of Intention to Sue*” and “*Invitation to arbitrate*”.

The deponent Islam Abou-Zid indicates that the Respondent paid a deaf ear to either notice.

The problem with the dispute resolution clause is that the word arbitration appears only once as the title on Para.12 and not within the narrative.

This manner in which Para.12 was drafted is no doubt troublesome.

My considered interpretation of the dispute resolution clause has led me to the following conclusions.

1. Clause 12 provides for both negotiation and arbitration.
2. Arbitration is set out only in one word.
3. The reference to arbitration nothing but a terse statement.
4. Negotiation on the other hand is enclosed within a lengthy narrative.

Imagine if the question were posed “*where shall you refer the dispute*”, then the terse answer “*arbitration!*” would suffice.

Moreover **S.2(1)(c) Arbitration and Conciliation Act, Cap.4 (ACA)** defines the essence of an arbitration agreement as “*an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not*”.

Therefore the **S.2(1)(c) ACA** definition cures any defect created by a terse or rambling dispute resolution clause.

Further **S.3(2) ACA** stipulates that arbitration agreement shall be in writing. This is the mandatory standard, not the manner in which references to arbitration should be expressed or styled.

I am satisfied that the Respondent's deaf ear treatment to the Applicant's requests to establish a tribunal, establishes the merits of this Application.

I shall accordingly appoint the arbitrator in the consequential Ruling.

Costs are awarded to the Applicant.

Delivered at Kampala on 21st October 2014.



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**JIMMY MUYANJA,
EXECUTIVE DIRECTOR.**