

THE REPUBLIC OF UGANDA

THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION  
(CADER)  
CAD/ARB/31/2012

SINO AFRICA MEDICINES & HEALTH LTD ..... APPLICANT

v.

- |   |   |                   |
|---|---|-------------------|
| <ol style="list-style-type: none"><li>1. SOROTI JOINT MEDICAL SERVICES LTD</li><li>2. ELIJAH WAKAMUKE</li><li>3. EPODOI JOSEPH</li><li>4. NYEKO J. FILBERT</li><li>5. KIRYA FRED</li><li>6. MALINGA THOMAS</li><li>7. SAKWA SAM</li></ol> | } | :.....RESPONDENTS |
|---|---|-------------------|

**RULING**

This is a Chambers Summons Application for the compulsory appointment of an arbitrator. It is supported by an Affidavit in Support deposed by one Li Wang Hong, the Applicant's General Manager (presumably because the first paragraph mentions that he works for the Respondent; I take this to be a slip of the pen, therefore an oversight which must be overlooked as a matter of common sense).

I am at the time of perusing this Application required to set a hearing date. The Application will then be served upon the Respondents. The Respondents are expected to file Affidavits in Reply on or before the hearing date. This whole process would take ten days at the very least, if the parties were to convene before me. It would then take between one to two days to consider the matter before I deliver my Ruling.

I have noted the following having read through the Application and Affidavit in Support:-

1. A Sale/Purchase Agreement (**Annex Sino "A"**) was executed between Sino Africa Medicines & Health Ltd and Soroti Joint Medical Services Ltd on 26<sup>th</sup> June 2009.
2. The clause pertinent to this Application reads as follows:-  
"8.0 DISPUTE RESOLUTION  
8.1 Any dispute arising out of this Agreement incapable of amicable and bona fide settlement shall be referred to Arbitration under the guidance of the Centre of (sic) Arbitration and Dispute Resolution – CADER."
3. There is communication (**Annex SINO "I"**) from the Respondents counsel which reads as follows,  
"Our Ref: OPADV/11/2012  
13<sup>th</sup>.11.2012  
Enoth Mugabi Advocates & Solicitors.

Dear Sir,

**APPOINTMENT OF AN ARBITRATOR**

We still represent Soroti Joint Medical Services Ltd and the above subject matter refers;

We have received the list of potential arbitraors (sic) to hand the matter as per your proposal. Our client has proposed that for purposes of transparency the Arbitrator for the said matter be appointed by CADER as an independent and impartial statutory body other than choices made by the interested parties.

In light of the above we propose that CADER be contacted to appoint an Arbitrator to handle the said matter. (emphasis mine).

**FOR OPYENE & CO. ADVOCATES."**

4. There is a visible stamp of acknowledgment of receipt of the said communication by the Applicant's advocates on 14<sup>th</sup> November 2012.
5. I find that the parties, especially the Respondents are therefore agreed that CADER should appoint an arbitrator. Their disagreement is symbolized by the failure to agree on the text of the chorus or who shall be the choragus. It is a disagreement on which process for formulating the arbitral tribunal, shall take the day. They are not disagreed on the principle that a tribunal should be instituted.

It would be substantial injustice to all the parties if I should lead them on through the normal legal procedure, which requires the Respondent to first file a reply and then assembling all the parties before me to argue out the Application.

The standard of justice in Uganda today, set out in Art.126(2)(e) is that substantive justice shall be administered without undue regard to technicalities. Better still justice should not be delayed [Art.126(2)(b)].

I can only envisage a turn about in circumstances if it were said by the Respondents that Annex SINO "I" is a forged document.

It is against this background that I have dispensed with setting a date for hearing of this Application and have instead made the appointment immediately after thorough perusal of the documents enclosed.

6. The agreement empowering CADER to appoint an arbitrator is one sanctioned by S.2(2) Arbitration and Conciliation Act, Cap.4, which reads as follows,

"2. Interpretation

(2) Where a provision of this Act, except section 30<sup>1</sup>, leaves the parties free to determine a certain issues, that freedom includes the right of the parties to authorize a third party, including an institution to make that determination." (emphasis mine).

7. In the circumstances, I hereby appoint Mr. Fred Kizza to preside over this matter.
8. The alternate arbitrator are Ms. Solome Luwaga or Mr. Ebert Byenkya who can only be approached in sequential order listed.
9. There is no order as to costs.

**Dated at Kampala on the 3<sup>rd</sup> day of December 2012.**

.....  
**JIMMY .M. MUYANJA**  
**EXECUTIVE DIRECTOR**

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<sup>1</sup> It should be noted in passing that the correct reference should be to S.28. Section 2(2) is derived from the UNCITRAL Model Law on International Commercial Arbitration, which refers to Article 28 (which is Section 28 under the Arbitration and Conciliation Act, Cap.4).