

THE REPUBLIC OF UGANDA

**THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
(CADER)**

CAD/ARB/ NO.14 OF 2014

IDRIS KATANDWE KABOGOZA APPLICANT

VERSUS

**THE REGISTERED TRUSTEES
OF JUMA & ZUKUULI
MUSLIM GROUP IN UGANDA RESPONDENT**

RULING

The parties executed the Agreement to Hire School Premises on 18th August 2007.

The pertinent clause to this Application reads as follows,

“12. It is further agreed upon that any disputes, conflicts and/or misunderstandings arising out between the two parties to this agreement hereafter shall be referred to an Arbitrator of the parties’ choice and thereafter resort to other legal for a incase of failure.”

The Affidavit in support deposed by Idris shows that disputes have arisen in the course of performance of the contract.

The Affidavit in reply deposed by Sheik Hussain Kaggwa evidences that the Respondent has a different interpretation of the contractual obligations.

In a nutshell there is no *consensus ad idem* between the parties. Therefore there is no doubt that there is a dispute between the parties.

The Respondent's Affidavit in Reply asserts that no arbitrator should be appointed.

Seen from a different direction, the Respondent has abdicated performance of the contractual undertaking to co-operate with the Applicant to put in place the arbitral tribunal, whenever any dispute arises.

In *Roko Construction Ltd v. Aya Bakery (U) Ltd*, CAD/ARB/10/2007, I observed that,

“The Respondent's failure to co-operate, in the appointment of the arbitrator, does not augur well, in light of the dual obligation, imposed upon all parties under the arbitration clause, which was wisely expounded by Lord MacMillan sixty five years, in the House of Lords, in *Heyman v. Darwins*, [1942] All E.R. 337, 347D as follows,

“I venture to think that not enough attention has been directed to the true nature and function of an arbitration clause in a contract. It is quite distinct from the other clauses. The other clauses set out the obligations which the parties undertake to each other hinc inde; but the arbitration clause does not impose on one of the parties an obligation in favour

of the other. It embodies the agreement of both parties that, if any dispute arises with regard to the obligations which one the one party has undertaken to the other, such dispute shall be settled by a tribunal of their own constitution.”

That Respondent’s stance that the arbitrator should not be appointed is evidence of failure to co-operate with the Applicant to establish the arbitral tribunal.

It should be noted that establishment of the arbitral tribunal is a neutral function which does not favor anybody. It is mere mutual performance of the obligation to actualize the forum where the disputes arising shall be heard.

I find the Application has merits and accordingly appoint Solome Luwaga as the Arbitrator.

Brenda Mahoro or Alfred Karokora (Supreme Court Justice *Emeritus*) shall be the replacement arbitrators (in consequential order) should Solome Luwaga decline this appointment under **Section 12(1) ACA**.

Costs are awarded to the Applicant.

Delivered at Kampala on 22nd October 2014.

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**JIMMY MUYANJA,
EXECUTIVE DIRECTOR.**