

THE REPUBLIC OF UGANDA

**THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
[CADER]**

CAD/ARB/019/2018

CONGREGATION OF THE HOLY SPIRIT LTD ----- APPLICANT

VERSUS

BOBU BISASO ----- RESPONDENT

REPRESENTATION

APPLICANT

John Kaddu

Lelia Katusiime

Kaddu & Partners Advocates.

RESPONDENT

Mr. Matovu Akram

Matovu, Kateregga & Co.

Advocates.

RULING

The parties on 7th September 2017 signed an agreement for sale and purchase of land.

The Respondent was the vendor, whilst the Applicant was the purchaser.

The arbitration clause states as follows,

“10. DISPUTE RESOLUTION

Any dispute that may arise out of this Agreement shall be settled by mutual agreement between the parties, failing which, shall be submitted to Arbitration under the Arbitration and Conciliation Act, Cap.2 of 2000”.

Respondent counsel is not opposed to the Applicant's prayer for appointment of an arbitrator.

Respondent's counsel however opposes the prayer for costs of this Application.

Reasons being the Applicant has made several attempts to settle the matter amicably; pursuit of the same is not over.

An order for costs would go against the spirit and intention of arbitration, which he was under the impression is amicable at this stage.

Lastly that Applicant counsel was not aware an Applicant would be entitled to costs at this stage of the proceedings.

Appointment of the arbitrator

Clause 10 does not specify the number of arbitrators.

We are in such situations guided by the **Arbitration and Conciliation Act, Cap.4** [hereafter referred to as the **ACA**] which states as follows,

"10. Determination of number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) If the parties fail to determine the number of arbitrators under subsection (1), there shall be one arbitrator."

Section 10(2) ACA purposefully cures the void arising from pathological clauses such the Clause 10, whose shortfall, I have already mentioned in part.

I shall therefore appoint one arbitrator to preside over the dispute.

COSTS

The answer to entitlement to costs lies in the law.

Section 1(c) Advocates Act, Cap.267 defines contentious business as “*any business done by an advocate in any court, civil or military, or related proceedings instituted or intended to be instituted in any such court, or any statutory tribunal or before any arbitrator or panel of arbitrators*”.

In performance of **Section 11 ACA** and **Article 11 UNCITRAL Model Law on International Commercial Arbitration** [hereafter **MAL**] function, CADER is a subordinate court, established by Parliament pursuant to Article 129(1) (d) Constitution.

The judicial powers are further confirmed by **Section 68 ACA**, which states as follows,

“68. Functions of the Centre.

The functions of the centre shall, in relation to arbitration and conciliation proceedings under this Act, **include** the following: -

- (a) to perform the functions referred to in sections 11, 12, 13, 14, 15 and 51.
- (b) to perform the functions specified in the UNCITRAL Arbitration Rules of 1976”.

In passing it is observed that Parliament under **S.68 (b) ACA** designated CADER as the default “appointing authority” under the 1976 UNCITRAL Arbitration Rules.

The **Advocates (Remuneration and Taxation of Costs) Rules, S.I.267-4** provided for arbitration as follows.

45. Taxation of costs upon an award

Costs may be taxed upon an award in an **arbitration** notwithstanding that the time for setting aside an award has not elapsed.

Sixth Schedule

1(a) (viii)

to file objections to an **arbitrator's** or commissioner's report the fee shall be as in items (iv) or (v) of this paragraph depending on whether it can be valued or not ...

Sixth Schedule

2(a)

Pleadings, interlocutory application, notice of motion or chamber application, originating summons, affidavit, petition of appeal, interrogatories, notices to admit and produce, agreement for compromise, adjustment or satisfaction of suit, or for reference to **arbitration** (two folios or less), 15,000 shillings.

Sixth Schedule

5(i)

to hear a reserved judgment or to obtain a judgment on **arbitrator's award** or commissioner's report, per half-hour or part thereof 20,000 shillings.

Sixth Schedule

5(o)

before an **arbitrator**, the same fees as for conducting a case in court;

A new regime on advocates costs and fees came into force on 7th December 2017; thereby amending S.I.267-4 whose provisions we have seen above.

The new law is the **Advocate (Remuneration and Taxation of Costs) (Amendment) Regulations. S.I. No.7 of 2018**, which provides as follows,

Sixth Schedule

Made under Regulations 37 and 57

Scale of fees in High Court, magistrate courts, tribunals and **arbitration** matters.

12. Attendance –

(1) attendance of court, tribunal, before an **arbitrator**, mediator, or conciliator conducting matter, to hear a judgment or ruling or to make any necessary application including taxation, 100,000 shillings per hour;

(2) Attendance of court, tribunal, before an **arbitrator** or mediator or conciliator on routine matters-

(a) by advocate, 100,000 shillings per hour

(b) by clerk, 20,000 per hour

We learn from this study of that advocates are entitled by law to pray for costs incidental to Applications lodged in relation to arbitration proceedings.

This instant Application is but a stage in arbitration proceeding envisaged by **S.11 ACA** and **Article 11 MAL**.

It is against this background that taking cognizance of the Respondent's concession to the prayer for compulsory appointment of the arbitrator that I award fifty percent of the costs of this Application to the Applicant.

The appointed arbitrator shall be listed in the consequential Ruling.

Dated at Kampala on **11th May 2018**.

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EXECUTIVE DIRECTOR