

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 138 OF 2007

ROKO CONSTRUCTION LTD ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

AYA BAKERY (U) LTD ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE J.P.M. TABARO

RULING:

This ruling follows two applications lodged by Roko Construction Ltd against M/S Aya Bakery (U) Ltd, and one Mohamed Mohamed Hamid who would appear to be the Chief Executive Officer of Aya Bakery (U) Ltd, on 27-9-2007. Subsequently they were consolidated under 0.11 CPR after the applicant's Counsel Mr. E Tumusiime, applied to Court for consolidation on the ground that they are similar and involve same questions of law and similar facts.

The applications were brought by Chamber Summons under S.6 and Rule 13 First Schedule, of the Arbitration and Conciliation Act (Cap 4 Laws of Uganda) as well as S.98 of the Civil Procedure Act (Cap. 71 Laws of Uganda), and S.33 of the Judicature Act (Cap 3 Laws of Uganda).

The background to the disputes as can be ascertained from the summary of the evidence attached to the pleadings, is that Roko Construction Ltd entered into building contracts with the respondents in 2005 in the month of July, in the case of Mohamed Mohamed Hamid for construction of a residential house at Plot 43B Windsor Close, Kololo in Kampala, and a factory in the case of Aya Bakery (U) Ltd at Plot 16A Kawempe in Kampala and after substantial work had been done, the respondents defaulted in paying the sums of money due when demanded, according to the averments made by the applicant.

In Miscellaneous Application No. 137 of 2007 the applicant claims 552,050,000/= for the contract entered into on 15-1-2005, while in Miscellaneous Application No. 138 of 2007 the amount claimed is shs.710,689,130/=. It is asserted by the applicant that consequent upon the respondent's failure to pay the sums of money due, the agreements were terminated but when the contractor/applicant took steps to remove the materials, equipment and plants from the construction sites, the respondent denied it access to the same and chased it away. These present applications seek orders of the Court to access the materials, equipment and plant so as to retrieve the property from the respondents.

From the record of pleadings, supporting affidavits and the accompanying documents, especially the annexures, it is fairly clear that the respondents have neither responded to the Arbitration Notice, nor obeyed this Court's Chamber Summons so as to submit either to the arbitration or resolution of the Chamber Summons now before Court. The respondents have not shown any interest in these proceedings whatsoever. As a result of the respondents' absence the applicant's Counsel, Mr. Tumusiime, was permitted to proceed ex parte.

The gravamen of the Chamber Summons is that the respondents have breached the building contracts and do not have any right of lien on the construction materials, plant and equipment which are the properties of the applicant.

After perusing the wording of S.6 of the Arbitration and Conciliation Act it is abundantly clear that interim measures are available to a party to an arbitration agreement. The building agreements in question contain arbitration clauses S.6 (1) of the Arbitration and Conciliation Act is couched in these words:-

“A party to an arbitration agreement may apply to the Court, before or during arbitral proceedings, for an interim measure of protection; and the court may grant that measure.”

Rule 13 of 1st Schedule to the Arbitration and Conciliation Act prescribes the procedure, by Chamber Summons.

S.33 of the Judicature act, and S.98 of the Civil Procedure Act which saves the inherent powers of Court, appear to me mere surpluses. The respondents have not had the courtesy to submit to the arbitration notice and have shown singular audacity by disobeying this Court's Chamber Summons. But, prima facie, there appears to be nothing in law or in fact that would entitle them to withhold the applicant's property after termination of the contracts as they have not bothered to appear to establish any lien on the properties in question. I find the applications well founded. I grant the same and order the respondents to release the applicants' properties forthwith with costs.

J.P.M. Tabaro

Judge

3-10-2007

3-10-2007 Applicant present
 Respondent not present
 Mr. E. Tumusiime for applicant
 No Counsel for respondent.
 Ruling delivered.

J.P.M. Tabaro

Judge

3-10-2007