

THE REPUBLIC OF UGANDA

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

CAD/ARB/NO.03 OF 2017

- 1. Jinja Produce & Millers Association Ltd**
- 2. Kasule Salim t/a Jambula Millers**
- 3. Badru Buyinza t/a Pologoma Grain Millers**
- 4. Ogwal James t/a Bando Millers Association**
- 5. Kigenyi Abdu t/a Corner Millers Group**
- 6. Ntege Suleiman t/a Bando Millers Association**
- 7. Bireiri**
- 8. Badiru Kisambira t/a Corner Millers Group**
- 9. Hajji Ali Juma t/a Corner Millers Group**
- 10. Hassan Wakoba t/a Corner Millers Group**
- 11. Mawanda Bosco**
- 12. Were Peter**
- 13. Tenya Yefe**
- 14. Keseda Michael t/a Bando Millers Association**
- 15. Mabiwo Mande**
- 16. Kungu Edward t/a Pologoma Grain Millers**
- 17. Kauma Zakia Malole**
- 18. Bogere Samuel Buyinza**
- 19. Oyella Victoria t/a Corner Millers Group**
- 20. Mbabazi Asha t/a Bando Millers Association**
- 21. Najibu Lugaire**
- 22. Hajati Shamim Namata t/a Bando Millers Association**
- 23. Hajati Halima Zasanze**
- 24. Nankya**

25. Prossy Wamboko

26. Kasubu Annet

27. Nalongo Kabimbiri

28. Namuli Alice APPLICANTS

VERSUS

UMEME (U) LTD RESPONDENT

Applicant counsel.

Gimanga Sam - Shonubi Musoke & Co. Advocates.

Respondent counsel.

Omongole Richard - Omongole & Co. Advocates.

RULING

1. The Respondent has signed contracts for the supply of electricity to the Applicants' grinding mills at Jinja Industrial Area.
2. Numerous problems cropped up in implementation of the contract causing the Applicants to commence the arbitration process.
3. It is common ground that: -
 - a. all parties are agreed to refer the matter to arbitration, and
 - b. all efforts by the parties, since 2010, to establish the arbitral tribunal have not yielded any fruit.
4. The Applicants now pray that CADER appoints an arbitrator to preside over the despite.
5. The Respondent opposes the prayer because:-
 - a. the Applicants failed to streamline the process for appointment of three-person arbitration panel;
 - b. the Application has not followed the prescribed CADER procedures; and
 - c. the combination of both grounds renders the Application premature.
6. The Applicants evidenced the following contracts which all bear the same dispute resolution clause.

Applicant number	Applicant Party Trade Name	Applicant Party	Applicant signing date	Respondent signing date
4	Bando Millers Association	Ogwal James	24-Nov-2009	11-Dec-2009
6	Bando Millers Association	Ntege Suleiman	24-Nov-2009	11-Dec-2009

10	Corner Millers	Hassan Wakoba	09-Mar-2010	15-Mar-2010
11	Kazimingi Milers Association	Mawanda Bosco	09-May-2010	10-May-2010
12	Win Win Millers Association	Were Peter	28-Apr-2010	24-Mar-2010
13	Win Win Millers Association	Tenya Yefe	28-Apr-2010	24-Mar-2010
14	Bando Millers Association	Kesede Michael	24-Nov-2009	11-Dec-2009
15	Win Win Millers Association	Mande Mabiuro	28-Apr-2010	24-Mar-2010
19	Corner Millers	Oyella Victoria	09-Mar-2010	15-Mar-2010
19	Corner Millers	Hajji Ali Jum[b]a	09-Mar-2010	15-Mar-2010
20	Bando Millers Association	Mbabazi Asha	24-Nov-2009	11-Dec-2009
21	Home Road Millers	Lugaire Najibu	7-Sep-2010	6-Sep-2010
24	Tusanyukirewamu Association	Nankya [Magret?]	16-Dec-09	24-Nov-09
26	Zibalatudde Millers Association	Kasubo Annet	28-June-2010	25-May-2010
28	Tusanyukirewamu Association	Alice Namuli	16-Dec-09	24-Nov-09

7. The above tabular analysis shows that the persons listed, in the table below, did not produce any contracts evidencing the pertinent dispute resolution clause.

Applicant number	Applicant Party Trade Name	Incorporation Certificates evidenced
1	Jinja Produce & Millers Association Ltd	Companies Act Certificate registered on 31-May-2004
2	Kasule Salim t/a Jambula Millers	Business Names Registration Act Certificate No.170609
3	Badiru Buyinza t/a [M]Pologoma Grain Millers	Business Names Registration Act Certificate No.170581
5	Kigenyi Abdu t/a Corner Millers Group	
7	Birieri	
8	Badiru Kisambira t/a Corner Millers Group	Business Names Registration Act Certificate No.170938

9	Hajji Ali Juma t/a Corner Millers Group	
16	Kungu Edward t/a Pologoma Grain Millers	
17	Kauma Zakia Malole	
18	Bogere Samuel Buyinza	
22	Hajati Halima Zasanze	
25	Prossy Wamboko	
27	Nalongo Kabimbiri	

8. The dispute resolution clause (repeated through all the contracts) reads as follows,
 “This MOU and the rights and obligations of the parties under or pursuant to this MOU shall be governed by and construed in accordance to the laws of Uganda. Any dispute arising out of or in connection with this MOU that has not been resolved amicably shall be finally settled in accordance with the Arbitration and Conciliation Act CAP 4 Laws of Uganda”.
9. When we apply the **Arbitration and Conciliation Act, Cap.4** [hereinafter referred to as the **ACA**] to the above clause the following interpretation is borne out,
- a. any pre-arbitration, amicable resolution may be recorded under **Section 58 ACA**;
 - b. any amicable resolution may be resolved during the course of arbitration proceedings under **Section 30 ACA**;
 - c. the envisaged non-amicable final settlement can only result from the arbitrator’s award under **Sections 31 and 32(1) ACA**.
10. Full citation of the parties reported failed attempts to set up would only make pleasant reading for a suspense novel. Suffice it to say that the evidence on record proves the parties have never successfully completed the task of instituting the arbitration tribunal.
11. The dispute resolution clause does not provide the number of arbitrators. The Respondent has not proved any clause, which determines that there should be

three arbitrators. **Section 10(2) ACA** therefore bound the parties at all times, to appoint only one arbitrator.

12. I am satisfied that this ten year odd failure necessitates invoking statutory interventionist powers under **Section 11(3)(b) ACA** to put in place the arbitration tribunal; more so given that neither counsel attempted to imbue the dispute resolution clause with an addendum appointment procedure agreement.

I shall therefore appoint the arbitral panel in the consequential ruling.

13. The other matter arising from this Application is whether Applicant counsel was right to consolidate all the parties in the single application for appointment of the arbitrator, which I have considered.

14. In court proceedings, parties may be joined when: -

- a. counsel drafts the pleadings – Order 1 Rule 2 Civil Procedure Rules, S.I.71-1 [hereinafter referred to as the CPR], and
- b. a plaintiff pursuing defendants who are all liable under one contract – O.1 r.6 CPR.

15. In any event misjoinder or nonjoinder is not fatal in court proceedings; the trial court is vested with the discretion to proceed with trial of the controversy regarding the rights and interests of parties before Court- O.1 r.9 CPR.

16. In arbitration consolidation of parties falls in the realm of party autonomy.

17. In this context, I describe party autonomy as the right of the parties to determine the procedure, which shall guide resolution of their case. Experienced counsel, do design arbitration rules, which are customized to the peculiarities of the case. These rules can be drafted before or after the case has arisen.

18. No consolidation clause was evidenced before me.
19. Having warned myself not to breach the party autonomy principle, I am inevitably restricted from issuing a blanket appointment covering all the parties listed in this Application.
20. Therefore going through the list of contracts proved with arbitration clauses, I shall now appoint a single arbitrator, for every contract proved with the arbitration clause.
21. The proved applicants, from Table 1 above, are Bando Millers Association, Corner Millers, Home Road Millers, Kazimingi Millers Association and Zibalatudde Millers Association.
22. It follows logically that each appointment is issued as if each applicant had filed a single application, with the attendant filing costs, which will be remedied by the affected applicants in respect of each appoint.
23. The appointed arbitrator list shall be issued in the consequential ruling.

Dated at Kampala on the 22nd day of March 2017.

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EXECUTIVE DIRECTOR