

**THE REPUBLIC OF UGANDA
IN THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
(CADER)
CAD/ARB No.22 of 2012**

BOARD OF GOVERNORS, JOHN PAUL S.S. CHELEKURAAPPLICANT

V.

KHENY TECHNICAL SERVICES LTDRESPONDENT

RULING

The parties appeared before me on 10th September 2012.

The Applicant was represented by Counsel John Mary Mugisha.

Mr. Kanamwangi Henry, the Managing Director for the Respondent, represented the Respondent company. We were informed that he is a 2007 Building and Civil Engineering graduate from Kyambogo University.

Mr. Kanamwangi Henry requested for a copy of the Application, the Contract and minutes of the site meeting.

Mr. Kanamwangi Henry informed me that he found the Summons to appear before CADER today, had been slipped under his Office door, on 1st September 2012.

I have looked at the Affidavit of Service deposed by Mr. Aduba Wilberforce on 8th September 2012 and have noted that the Summons were received and signed for.

Mr. Kanamwangi Henry's response to my question was that he was not aware of Annexes B1, B2 and B3 to the Application.

He nevertheless confirmed he was aware of the Contract, which was attached to the Application.

Mr. Kanamwangi Henry then notified me, that he had presented the Summons to his lawyer one Mr. Tom Malinga, who did not avail him any advice. His lawyer's silence is depicted by the fact that Mr. Kanamwangi Henry did not know where to solicit information regarding the Application or file pertaining to the Summons.

I have considered Mr. Kanamwangi Henry's prayer.

I answer it in the negative because I find it strange that Mr. Kanamwangi Henry turned around in the same vein to ask to be served copies of the Application before me. Knowledge that behind every summons is an application or a legal process at hand is intrinsic to lawyers; hence my hunch that the request by Mr. Kanamwangi Henry is a tell tale sign of knowledge of the legal process which was in issue and his insight may have been possibly aroused by his Advocate.

I am pained and regretfully find that Mr. Kanamwangi Henry's character is most untruthful.

In the circumstances I find that this Application has not been opposed.

This Application seeks the compulsory appointment of an adjudicator.

The contract in issue between the parties was executed on the 25th day of February 2012.

The clause in issue reads as follows: -

“24. Disputes

24.1 If the contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to any Adjudicator appointed under the contract within 14 days of the notification of the Project Manager’s decision.”

I have perused the Affidavit in support of the Application deposed by Msgr. John B. Kauta and have no reason to disbelieve that the Annexes B1, B2 and B3 were served upon the Respondent company. I have arrived at this conclusion by looking at the 8-September-2012 Aduba Wilberforce Affidavit in Support of Service and have noted that it was received and signed for. The previous Affidavit of Service of Notice for the 15-August-2012 hearing, was not signed for to acknowledge receipt. I am compelled to note the manner of the Respondent’s receipt of documents is not such as to inspire and create confidence in bystanders. But that laxity or lack of decorum in the Respondent’s office procedures is not one to judged upon others. Acknowledgement of receipt of documents is a matter of courtesy in modern day civilization. Challenge of the documents is a later right, which is also entrenched modern laws of all civilized societies!

I had previously found the Application was unopposed; I now add that it was also eloquently drafted that I need not have given Counsel John Mary Mugisha an opportunity to submit on the same.

The contract defines the adjudicator as: -

“1.1 (b)

*The ‘Adjudicator’ is the person appointed jointly by the Employer and the Contractor to **resolve disputes** in the first instance.”*

This definition is synonymous with the function of arbitration agreement set out in S.2(1)(e) Arbitration and Conciliation Act, Cap.4, [hereafter referred to as the ACA] which reads as follows: -

“arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not.”

There is no provision in the Arbitration and Conciliation Act, which restricts the definition of an arbitrator.

My considered conclusion is that the ACA legislation has to be purposefully construed.

I therefore find that the powers to effect compulsory appointment of an arbitrator under **S.11 ACA**, equally apply to this clause, given that the test is failure of the agreed process to invoke the agreed dispute resolution procedure.

I therefore appoint Dr. Anania Mbabazi as the adjudicator.

Should he decline this appointment, then Mr. Raj Dewani and Mr. Victor Odongo can be approached in sequential order.

Cost of this Application are awarded to the Applicant.

Delivered in the presence of the parties at CADER on the 10th day of September 2012.

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Jimmy Muyanja
EXECUTIVE DIRECTOR.