

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 910 OF 1993

PHOEBE N. MUGABI:::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

M/S PRINT PAK (U) LTD:::::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

This ruling is in respect of a preliminary objection raised by Mr. Buyondo for the defendant at the commencement of the hearing of the case. He submitted that the tenancy Agreement upon which the unit was based contained an arbitration clause which says;-

"Any dispute as to the contents herein or interpretation of this agreement shall be referred to an arbitrator to be agreed upon by both parties".

Counsel pointed out that there is a section (he did not specify the section) in the Arbitration Act which provides to the effect that where there is a clause for arbitration in a statute or agreement, a suit which is instituted in that regard without first referring the matter to an arbitrator as provided or agreed upon is premature.

He submitted that in the instant case, there is a clause for arbitration. But, that the Plaintiff instituted the suit without first referring the matter to the arbitrator as agreed. He submitted that in that case, the suit was premature and prayed that it be struck out.

Mr. Rezida replied on behalf of the Plaintiff that, the suit was not premature. He contended that insertion of an arbitration provision in an act of parliament or an arbitration clause in an agreement does not oust the Jurisdiction of the court. He cited the Supreme Court decision in civil Appeal No. 19/91 - David Kayondo vs. Cooperative Bank Ltd. as his authority for that contention. He prayed that the preliminary objection be dismissed. He argued that the preliminary objection was a delaying tactic aimed by the defendant at buying time for the Defendant Company to sell off its assets and thus defeat the purpose of this suit. He pointed out that the defendant company had already advertised in the New Vision Newspaper of 9/7/94 the sale of its assets within 45 days.

Mr. Buyondo did not refute the allegation of advertisement but he replied that the advertisement notwithstanding, the preliminary objection should be considered on its merits.

I have given my due consideration to the above arguments. I must state at the outset that, it was rather strange that Mr. Buyondo could not specify the section of the arbitration Act (Cap.55) he was relying on for his objection. He said he did not have the relevant legal material. I am not impressed by that explanation because we have the High Court Library here available to Advocates, I would have expected counsel to arm himself with whatever authorities he had to support his contention in the objection. Instead he chose to leave it to the court to fish out the provision in that Act which supports his arguments.

The nearest to his argument is section 17 of the Arbitration Act.

But even this merely gives to the court discretion at the application of a party to a proceeding where there is an arbitration clause to order a stay of the proceedings to enable the matter to be submitted to the arbitrator.

However, the question whether an arbitration provision in a statute or an arbitration clause in an agreement ousts the jurisdiction of the court over the matter was considered by the supreme Court in Civil Appeal No. 19/91 David Kayondo vs. The Cooperative Bank Ltd. In that case, Manyindo D.C.J. answered the above question in

the negative in the following words:-

“It seems to me that where the jurisdiction of the court is expressly excluded, then the matter in question may be taken either for arbitration or for determination by a competent court.”

He cited London Hospital Vs. Jacob (1956) 2 AER 603 to support his decision. It is clear from the above that even where the jurisdiction is expressly excluded, that did not oust the jurisdiction of the court. The learned DCJ went on to say:-

“Under the constitution and the judicature Act the High Court has unlimited original jurisdiction over all matters civil or criminal subject to any written law. It is settled law that for a statute to oust the jurisdiction of the court, it must say so expressly. Of course ouster may be inferred from words of the statute if such inference is irresistible”.

The above is the position of the law regarding ouster of jurisdiction of the court. In the Instant case, there is nothing in the arbitration Act which attempts to oust the jurisdiction of the court. Arbitration clause merely provides an alternative remedial proceedings. In this case the plaintiff opted for the court proceedings. That does not make the suit premature. For the reasons stated above, the preliminary objection is over-ruled.

G.M. OKELLO

JUDGE.

15/7/94

15/7/94:- Ruling delivered in my Chambers in the presence of

Mr. Rezida for Plaintiff

Mr. Buyondo for the Defendant

Mr. Komakech court interpreter.

O.M. OKELLO

JUDGE.

15/7/94