

**THE CENTRE FOR ARBITRATION AND DISPUTE
RESOLUTION**

ARBITRATION CAUSE NO.19 OF 2008

APPLIANCE WORLD LIMITED APPLICANT

VERSUS

M.H. JAGANI]	
J.V. CHANDRIA]	
M.R. LADAK]	
PROPERTY SERVICES LTD]	
K.H. KARANI]	
K. KARIA] RESPONDENTS

RULING

This Application was lodged by Appliance World Limited on 6th November 2008. The Application was set for hearing at 2.00p.m., 11th November 2008.

At the hearing date, the Applicant was present, represented by Mr. Bharat Chandarana together with their Counsel Mr. Enos Tumusiime. The Respondents were not present neither were they represented.

Mr. Enos Tumusiime prayed to proceed ex parte, which prayer was granted.

Mr. Enos Tumusiime also prayed under **Section 2(i) Arbitration and Conciliation Act (ACA)**, to add the names of K.H. Karani and K. Karia

as necessary parties, in light of new information which had come to his attention. I granted this prayer too.

Mr. Enos Tumusiime then submitted that a dispute had arisen between the parties from a sub-lease agreement dated 15th February 2005. The parties to this Agreement which is attached as Annex A to the Affidavit sworn in support by Mr. Amar Chandarana, are Mohamedraza Husein Jagani, Vallabdas Chandarana and Mohamedraza Gulamali Ladak (as landlord) and Appliance World Limited (as the tenant).

It was further submitted that on 29th September 2008, the Applicant issued the Respondents a Notice of Arbitration. This notice is attached as Annex F to the Affidavit sworn by Mr. Amar Chandarana. The penultimate paragraph of this notice states as follows,

“This is therefore to inform you that a dispute has arisen under paragraph 4(e) of the sublease Agreement and Appliance World Ltd hereby refers this matter to Arbitration and you are hereby invited to concur to the appointment of Mr. Charles Kabugo, an Advocate, as the Arbitrator to resolve this dispute. If we don’t hear from you within 7 days from the date of this letter (above), we shall take the necessary legal action to protect our Client’s interests.”

The arbitration clause in this agreement reads as follows,

“4. PROVIDE ALWAYS AND IT IS HEREBY EXPRESSLY AGREED BETWEEN THE LANDLKORD (sic) AND TENANT THAT:

(e) If there is any dispute in respect of any matter touching this sub-lease the same will be referred to a single Arbitrator appointed by both the parties and his award will be final and binding to both the parties. The Arbitration shall be conducted under the Arbitration Act of Uganda and any amendments made under that Act.”

Mr. Enos Tumusiime then referred to Paragraph 7 of Mr. Amara Chandarana’s Affidavit which depones that to date the Respondents either failed or refused to respond to the Notice to appoint an arbitrator.

For this reason it was submitted that Application was lodged properly before CADER. He therefore invited CADER to exercise it’s discretion to appoint an arbitrator.

The Respondents’ unfortunate failure or refusal to respond to the Notice of Arbitration, reflects their refusal to participate in the formation of the arbitral tribunal; a right enshrined by the **ACA**.

In *Roko Construction Ltd v. Aya Bakery (U) Ltd*, CAD/ARB/10/2007, I observed that,

“The Respondent’s failure to co-operate, in the appointment of the arbitrator, does not augur well, in light of the dual obligation, imposed upon all parties under the arbitration clause, which was wisely expounded by Lord MacMillan sixty five years, in the House of Lords, in *Heyman v Darwins*, [1942]All E.R. 337, 347D as follows,

“I venture to think that not enough attention has been directed to the true nature and function of an arbitration clause in a contract. It is quite distinct from the other clauses. The other clauses set out the obligations which the parties undertake to each other hinc inde; but the arbitration clause does not impose on one of the parties an obligation in favour of the other. It embodies the agreement of both parties that, if any dispute arises with regard to the obligations which one the one party has undertaken to the other, such dispute shall be settled by a tribunal of their own constitution.”

The Respondent’s silence or failure to co-operate in the appointment of an arbitrator is also forfeiture of the right to participate in constituting the arbitral tribunal.”

This failure to co-operate in constituting the arbitral tribunal is the evil that Section 11 ACA, seeks to cure. In the circumstances, I find merit in the Applicant’s prayer that an Arbitrator be appointed by CADER. I therefore appoint Hon. Rtd. Principle Judge Herbert J. Ntabgoba (emeritus) as the arbitrator in this matter.

Should Hon. Rtd. Principal Judge Herbert J. Ntabgoba decline to handle this matter under **Section 12(1) A.C.A** owing to circumstances which he perceives might give rise to his impartiality or independence, I appoint Kafuko Ntuyo and Patricia Basaza Wasswa as arbitrators in this matter.

These two are to be approached in the sequential order listed.

The arbitrator is reminded to sign the Declaration of Impartiality, Party Undertaking Agreement and file the same with CADER upon assuming jurisdiction over this matter and return the file to CADER for archiving purposes upon completion of the case.

Costs of this Application shall be borne by the Respondent.

CONTACT PARTICULARS:-

Arbitrator
Hon. Rtd Principal Judge J. Ntabgoba Kampala Associated Advocates 5 th Floor Workers House Pilkington Road, Kampala

Delivered on 11th November 2008.



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**JIMMY MUYANJA,
EXECUTIVE DIRECTOR.**