

THE REPUBLIC OF UGANDA

THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION

CAD/ARB/NO.9 OF 2009

CAIRO INTERNATIONAL BANK LTD APPLICANT

v.

**EAST AFRICA GENERAL
INSURANCE CO. LTD RESPONDENT**

RULING

This application for the compulsory appointment of an arbitrator, arises from the Respondent's failure to concur upon the Applicant's nominee.

Both parties executed a Money-Insurance Policy on 13th June 2008.

The Applicant lost US\$29,130 on 12th August 2008. The Applicant's attempts to recover the same under the Money-Insurance Policy from the Respondent were fruitless. At this stage, the Applicant declared a dispute and suggested one nominee for the Respondent's consideration.

The Respondent replied as follows,

*“RE: NOTICE OF ABITRATOR (sic) AND
APPOINTMENT OF AN ABITRATOR.(sic)*

*We have received you letter dated May26, 2009 with
respect to the above matter.*

We have carried out our search and according to the list of certified arbitrators we have Mr. Charles Kabugo is not one of them.

We therefore request that you suggest another arbitrator who is either in class A or Class “B”, then we shall respond.”

The Respondent is emphatic that it did not refuse to concur, more so when it stated reasons; in the event the Respondent was wrong, the reasons leading to the error are the same.

It is the Respondent’s contention that it’s high profile business and as such would not like to compromise on the quality of the arbitrator engaged.

The arbitration clause in issue reads as follows,

*“”10. All differences arising out of this policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference **or if they cannot agree upon a single Arbitrator** to the decision of two Arbitrators **one to be appointed by each of the parties in writing** or in case of disagreement, of an Umpire appointed by the Arbitrators in writing before entering upon the reference.”*

It is clear from Clause.10 that the appointment of a single arbitrator would require the concurrence of both parties.

From Clause.10, any failure to mutually agree upon an arbitrator, imposes upon the differing party the immediate burden of appointing it's own arbitrator; the nominating party has no other task to perform, since the differing party's failure to concur converts the nominee arbitrator, into it's own arbitrator.

On the other hand, Clause.10 does not impose any obligation upon the differing party to state reasons for its refusal to concur on the appointment of an arbitrator.

Against this background I find that the Respondent erred in failing to appoint it's own arbitrator.

In the circumstances, I find merit in the Applicant's prayer that an arbitrator be appointed, by CADER.

I therefore appoint Hon. Principle Judge Herbert J. Ntabgoba (emeritus) as the second arbitrator in this matter.

Should Hon. 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 Sim Katende and Alex Rezida as second 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 1st July 2009.



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**JIMMY MUYANJA,
EXECUTIVE DIRECTOR.**