

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
Miscellaneous Cause No. 056 OF 2022
(Arising Out of CAD/ARB/22/2022)**

**1. KALIISA JOHN
2. KYAZZE CHRISTOPHER
3. BAMPABULA PATRICK
4. SSEBANAKITTA TEMISEWO
5. WAKISO CITY SLAUGHTER(U)
LIMITED:::::::::::::::::::::::::::::::::APPLICANTS**

VERSUS

**1. CRANES ASSOCIATED ADVOCATES
2. NTAMU BADRU
3. MAGOBA JOHN
4. LUMANSI DAVID
5. BIRABWA ANNET
6. NASSUNA JOAN
7. SSEBYALA SUDAIS
8. MUGALU ABAS
9. LUBEGA ADAM:::::::::::::::::::::::::::::::::RESPONDENTS**

Before: Hon. Lady Justice Cornelia Kakooza Sabiiti

RULING

This application was brought under **Section 98 CPA, Section 33 Judicature Act, Regulation 9 & 10 of the Advocates (Profession Conduct) Regulations and Order 52 Rules 1,2 and 3 of the Civil Procedure Rules.**

It is seeking orders that; the 1st respondent is conflicted in acting for the 2nd to 9th respondents and therefore in violation of the Advocate-Client relationship and the Advocates (Professional Conduct) Regulations. The lawyers in the 1st respondent are potential witnesses in an arbitration proceeding Vide CAD/ARB/22/2022 and should be barred from representing

the 2nd to 9th respondents in the arbitration proceeding. Costs of the application be provided for.

The applicants raised nine grounds in their Notice of Motion and amplified in the affidavit in support deposed by **Bampabula Patrick** one of the directors of the 5th respondent and the 3rd applicant herein. He briefly states that; before the intended arbitration proceeding, the 5th applicant was a client of the 1st respondent and in representing and advising it, they became aware of facts which could be prejudicial to it. That because of the relationship, the appearance of the 1st respondent on behalf of the 2nd to 9th respondents who are party of the intended arbitration proceedings could be a violation of the advocate-client relationship. The dispute in CAD/ARB/22/2022 raises issues and claims that took place during the interaction between the applicants and the 1st respondent as client and advocate. That the 1st respondent have divulged some of the confidential and privileged information and are likely to divulge more if allowed to continue appearing and or representing the 2nd to 9th respondents in CAD/ARB/22/2022.

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That the facts as discerned in the application for appointment of an arbitrator, the affidavit in reply filed on 10th November 2021 against an application for an interim protective measure and the petition filed before the registrar of companies point at the direct involvement to the 1st respondent which bring forth the need to summon them as witnesses. That the interaction between the applicants and the 1st respondent created a fiduciary relationship which obligation was violated when they accepted instructions to represent the 2nd to 9th respondents an act that gives rise to conflict of interest. That the 1st respondent has acted in breach of the Advocates Act and the Advocates (Professional Conduct) Regulations. That the 2nd-9th respondents are at fault

for appointing the 1st respondent knowing very well that the latter had all along acted for the 5th applicant. That it is in the interest of justice that the application be granted.

The application was opposed by **Ntamu Badru**, the 2nd respondent, who deposes on his own behalf and the respondents who he alleges authorised him to swear on their behalf. That this application is frivolous, vexatious, misconceived, incompetent, bad in law and shall raise a preliminary objection to the effect that the High Court does not have jurisdiction to entertain an application of this nature since it offends Section 9 of the Arbitration and Conciliation Act. That this application is not rooted and/or grounded anywhere and the same should be dismissed with costs to the respondents.

Representation.

The applicants were jointly represented by **AF. Mpanga Advocates** and **M/s Origo Advocates** and the respondents were represented by **Crane Associated Advocates**. Both parties filed their submissions to the application, as well as rejoinder submissions by the applicant which I have read and considered in my resolution.

The applicants' counsel raised three issues for consideration.

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- i) Whether this court has jurisdiction to entertain the current application.
 - ii) Whether the 1st respondent and the lawyers therein are conflicted in acting for the 2nd-9th respondent in CAD/ARB/22/2022 and therefore should be barred from representing the 2nd-9th respondents.
 - iii) What remedies are available to the parties.

Resolution.

Issue 1: Whether this court has jurisdiction to entertain the current application?

Applicants' counsel submitted that this court has jurisdiction to entertain this application. That this application is against the 1st respondent and that the 2nd -9th respondents are only added hereon ceremonially but the orders are sought against the 1st respondent. That **Section 9 of the Arbitration and Conciliation Act** provides; *Except as provided in this Act, no court shall intervene in matters governed by this Act.* Counsel argued that the nature of the application before court is purely by the 5th applicant against the 1st respondent and not 2nd -9th respondents and the orders sought are not orders governed by the Arbitration and Conciliation Act, thus any argument in that line is misplaced and baseless. Therefore, the preliminary objection raised is purely academic and lacks legal merit.

On the other hand, it was submitted for the respondents that the Arbitration and Conciliation Act that governs arbitration proceedings in Section 9, bar courts from interfering with proceedings except as provided therein. Counsel relied on the case of **China Communication Construction Company Limited Vs Justus Kyabahwa Misc. App. No. 692 of 2019**, where Justice Mr. Duncan Gaswaga held that *"....the cumulative effect of the above interpretation and discourse is that the new section 9 of the ACA is a specific and latter piece of legislation which expressly outs the jurisdiction of court (except as provided by the ACA) in disputes resolved by way of arbitration in cases where parties have agreed to resolve the dispute between them by arbitration. In the same vain and by implication the provision supersedes the general provisions of section 82 of the Civil Procedure Act which should*

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therefore give way for it.... Accordingly, the applicant cannot invoke the provisions of Section 82 of the CPA which govern review generally in civil proceedings, when there is a specific law (ACA) that governs the nature of proceedings herein."

Counsel therefore contended that the applicant cannot invoke general laws in form of the Judicature Act, Civil Procedure in matters governed by the specific Arbitration and Conciliation Act. That Misc. App. No. 22 of 2022 arising from CADRE/ARBITRATION CASE No. 22 of 2022 is governed by a law in the ACA, it invites this court to intervene by making orders that affect the proceedings, it should state the law it is brought under otherwise court cannot entertain it.

I have addressed my mind to the above arguments. The applicants filed this application seeking among other orders that the 1st respondent are potential witnesses in an arbitration proceeding Vide CAD/ARB/22/2022 and should be barred from representing the 2nd-9th respondents in the arbitration proceedings.

Article 126 of the Articles of Association of the 5th Applicant, states as follows;

"if and whenever any difference shall arise between the Company and any of the members or their representatives touching the construction of any of the articles herein contained or any act or thing made or done or omitted or in regard of the rights and liabilities arising hereunder, or arising out of the relation existing between the parties by reason of these articles or of the Act, such difference shall forthwith be referred to two arbitrators one to be appointed by each party in difference or to

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an umpire to be chosen by the arbitrators before entering in the consideration of the matter referred to them and every such reference shall be conducted in accordance with the provisions of the laws of arbitration for the time being in force in Uganda."(emphasise is mine)

In his affidavit in support, the 3rd applicant contents that on the 26th day of November 2019, the 5th applicant appointed the 1st respondent as its attorney/lawyer. That on 12th March 2020, the 9th respondent wrote a letter demanding a pay of three billion and accountability of the affairs of the 5th applicant. The 1st respondent firm was instructed to respond to the 9th respondent's claims on behalf of the 5th applicant to which it did. That a Board meeting was convened and a lawyer from the 1st respondent a one Kibirige Ismail attended and gave advise on which the 5th applicant acted. That when they filed an interim measure of protection, they raised issues for determination in the intended arbitration and the 1st respondent filed a reply on behalf of the 2nd-8th respondents. That all events that are questioned by the applicants happened when the 1st respondent was the attorney/lawyer of the 5th applicant and later Company Secretary. That the lawyers of the 1st respondent are potential witnesses in CAD/ARB/22/2022 and are barred from representing the 2nd to 9th.

It is clear from the above set of facts that there is firstly a dispute between the company and its members which is under Arbitration vide CAD/ARB/22/2022. Secondly, an objection as to the representation of the 2nd-9th respondents by the 1st respondent in CAD/ARB/22/2022. The latter objection strictly arises from the arbitration process. Also, the arbitration clause (Article 126 of the AOA) covered disputes in relation to representatives to which the grounds of this application are encompassed.

I shall repeat **Section 9 of the Arbitration and Conciliation Act** for emphasise, it provides; *Except as provided in this Act, no court shall intervene in matters governed by this Act.*

I also associate myself with the decision of **China Communication Construction Ltd Vs Justus Kyabahwa (supra)** as referred to by respondent counsel and the decision in **National Social Security Fund and W.H. Ssentongo T/A Ssentongo & Partners v. Alcon International Ltd CA No. 02 of 2008** where it was held that:

"An arbitration clause in a contract has an enduring and special effect, that is, even if parties decide to adopt a different dispute resolution mechanism for a particular dispute that arises under a contract, the arbitration continues in force and is not thereby totally repudiated unless there is solid reason for doing so. Courts will always refer a dispute to arbitration where there is an arbitration clause in a contract."

This court is obliged by law not to intervene in matters subject to arbitration process unless otherwise provided for in the Act. I find that Court cannot entertain this application, it is rather referred back for arbitration. The objection as to representation of the 1st respondent in the arbitration process may be raised at the preliminary meeting and should be handled by the arbitrators.

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Having decided the issue of jurisdiction in negative, it would be futile to discuss the other issues and this disposes of the application.

This application is therefore dismissed, with orders for each party to bear its own costs.

It is so ordered



CORNELIA KAKOOZA SABIITI

JUDGE

Date: 8th September 2022

