

UGANDA / JUDGMENT

Singh v Nand and Another (Civil Case No. 40 of 1928) [1928] EACA 5 (1 January 1928)

[1928] EACA 5

COURT

East African Court of Appeal

BEFORE

Sheridan, J

CASE / FILE NUMBER

Civil Case No. 40 of 1928

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Before SHERIDAN, J.

NARAIN SINGH

\$\boldsymbol{v}\$.

ASSA NAND AND ANOTHER. C. C. \$40/1928\$.

Arbitration Ordinance (Cap. 18).

Held: -That where the parties to the submission to Arbitration have provided that the appointment of an umpire shall take place
prior to the arbitrators entering upon the "business of reference," such appointment is a condition precedent.

ORDER.—On or about the 1st November, 1927, the applicant and respondents agreed to refer all matters in dispute between them to the arbitration of Messrs. Amritsaria Mal Marwaha and The submission to arbitration contains a provision Darbarilal. that in case the arbitrators should not agree then the matters about which they disagreed were to be referred "to the umpirage of such person as the said arbitrators shall before they enter on the business of reference appoint in writing." It is common cause that the arbitrators have not appointed an umpire and the affidavit filed in support of this application for an enlargement of time under section 10 of the Arbitration Ordinance sets forth that "in accordance with the said submission the arbitrators proceeded with the arbitration and held several sittings." The power of this Court in a proper case to make an order enlarging the time is discretionary and in the exercise of its discretion I do not think the time should be enlarged unless an umpire can be appointed. Mr. Schwartz for the applicant has relied on section 6 (c) of the Ordinance which is the equivalent of section 5 (c) of the English

Arbitration Act, 1889. Section 2 of Schedule I to the Arbitration Ordinance provides that "if the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award."

Now in the case under consideration the parties to the submission to arbitration have for reasons best known to themselves provided that the appointment of an umpire shall take place prior to the arbitrators entering upon the "business of reference." Such a provision is still quite common in submissions to arbitra- \$\\quad\\quad\\textbf{tion.}\$ Section 6 \$(c)\$ of the Arbitration Ordinance has therefore no application to the facts of this case. In the case of *Harding v. Watts*, 15 East p. 555, at p. 566 Lord Ellenborough, C. J., said: "It is very convenient for arbitrators to begin by appointing

an umpire becR1lse t-hey are more likely to agree upon a proper <'hoice of one before t,hey themselves begin _to quan-el; but if the parties have not expressly restrained them from making the .choice nfter the time for **making** their own award expires there is nothing to restrain them in reason and sense from choosing ·the umpire at nny time while he has power to act."

In the case before me the parties have expressly restricted the appointment of an umpire to a time prior t.o the arbitrators entering upon their duties.

So far I have <lealt with the applic.:ution on the point as t.o whether thf> Court should exercise n discretion by- enlarging the time for mnking an ,iward. I will however go a stage further ,md hold that the appointment of an umpir~ in accordance with the terms of the deed of submission was a condition precedent to the arbitrators entering upon the matters referred to them. This view was expr~ssed by North, J., in the case of *Shcplnrnd v. The Mayor ancl Corp01:ation of Norwich L. T.* (X. S.) 54 Ch. J). p. 1050, quoted by Mr. Phadke in resisting the application. Mr. Schwartz's answer was that this case and those referred to therein were decided prior to the Arbitration Act,. That may be so but the fact does not affect the question at issue. The Arb.itration. Act does not fetter the right of the parties· to include in the deed of submission such terms as they may· wish. If support were required for this proposition I would refer to the judgment of A. L. Smith, J., in *In re an Arbitration between Wilson and Son and the Eastern Counties Nav.igation and Transport Co.* I Q. B. D. (1892), 81. The passage reads: " Secondly it is contended that t.he case of *In re Willia.ms and Stepney* -decides tluit the Act of Parliament overridiils the submission but I am of opinion that it only decides that the Act appli~s so as to introduce certain provisions into a submission unless the contary is provided."

In conclusion I hold that the Court has no power to enlarge the time and that if it had such power I would not exercise a discretion in favour of the applicant, more especially as the arbitrators far from expressing any desire to continue the proceedings have asked the parties to have the matter sett.led elsewhere.

The application is refused with costs to the second respondent against the applicant.

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