

UGANDA / JUDGMENT

**The Microfinance Support Centre Ltd v
Kurbstone Investment (U) Limited (Civil Suit
No.
0388 of 2024) [2025] UGCommC 122 (5 June 2025)
[2025] UGCommC 122**

COURT

Commercial Court of Uganda

BEFORE

Susan Odongo, J

CASE / FILE NUMBER

Civil Suit No. 0388 of 2024

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) CIVIL SUIT NO. 0388 OF 2024**

10 THE MICROFINANCE SUPPORT CENTRE LTD PLAINTIFF

VERSUS

KURBSTONE INVESTMENT (U) LIMITED DEFENDANT

BEFORE: HON. LADY JUSTICE SUSAN ODONGO

RULING

Background

- 20 The Plaintiff instituted this Suit for breach of a tenancy agreement and sought orders for;
- 1) Payment of USD 24,240 in lieu of the 6-month notice period for termination.
- 2) Payment of USD 24,240 as special damages
- 25 3) General damages
- 4) Interest from the date of filing until payment in full on (1), (2) and (3)
- 5) Costs of the suit.

The back ground of the matter is that on the 24th of July 2023, the parties executed a tenancy agreement for premises located at Plot 1 Kanjokya Street,

30 Kisementi (Ground Floor, Plot 8), for the operation of a business comprising a café and restaurant. The lease term was five (5) years, with a monthly rental sum of USD 3,000 payable quarterly.

- 5 The Plaintiff duly fulfilled all obligations under the agreement, including remitting USD 24,240 on the 7th of August 2023 as a combined rental installment and security deposit. Following several meetings and failure to mutually agree on a revised payment plan, the Defendant terminated the agreement. The Plaintiff subsequently issued multiple demands for the refund of the USD 24,240
- 10 paid to the Defendant, which remained unheeded, necessitating the institution of this civil suit.

The Defendant, in the Written Statement of Defense, expresses the intention to raise a preliminary objection to the suit and have it struck out on grounds that the tenancy agreement contains a dispute resolution clause mandating 15 arbitration for any disputes arising therefrom.

Hearing and Representation.

When the matter came up for hearing, the plaintiff was represented by Mr. Kalibala Blair. Neither the Defendant nor their Counsel was in court. Counsel for the plaintiff addressed court, by oral submissions, on the Preliminary 20 Objection on jurisdiction of the court raised in the written statement of defense.

Issue for determination

The singular issue for determination is whether this suit is barred by law for want of jurisdiction.

Determination

- 25 Preliminary Objections, if upheld, have the effect of disposing of the matter at an early stage without the need to delve into the substantive merits of the case. They are in the nature of a demurrer and are raised on purely points of law like jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration
- 30 or procedural irregularities and if successful, can result in the suit being struck out in limine. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. *(see; Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, Law, J. A. at page 700 and Sir Charles Newbold, P. at page 701)*

- 5 This preliminary objection before this Honourable Cour raises the issue of jurisdiction, a fundamental objection that goes to the root of the matter. Jurisdiction is the first test in the legal authority of a court and its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the court to decide or
- 10 adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon. (see: *Miscellaneous Application 0001 of 2016 Koboko District Local Government v. Okujjo Swali)*

The original and unlimited adjudication powers of this Court is couched in the 15 language of Article 139(1) of the Constitution as follows:-

Jurisdiction of the High Court

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(1) The High Court shall subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other 20 *jurisdictions as may be conferred on it by this Constitution or other law.*

The language used in Article 139(1) above shows that the unlimited jurisdiction of the High Court is not absolute but subject to statutory limitations, in this particular case, those created by arbitration agreements. Current trends in jurisprudence and contemporary legal practice embrace Alternative Dispute 25 Resolution grounded on the recognition that dispute settlement by arbitral tribunals enjoy parity with courts in resolving disputes. The rationale here being to recognize Party Autonomy in Arbitration, a tenet that acknowledges the parties' conscious agreement to settle disputes outside of court. The Arbitration and Conciliation Act, Cap. 5, a law relating to arbitration in Uganda, has 30 adhered to the underlying intent of this principle by precluding court involvement in matters governed under the Act *(see: section 9)*. The courts have just as well pronounced that the unlimited jurisdiction of the High court cannot override the Arbitration and Conciliation Act. (see: *Babcon (U) Ltd vs Mbale Resort Hotel (Civil Appeal 87 of 2011)*).

35 It is trite that arbitration derives authority from the consent of the parties, expressed in writing either as a clause in an underlying agreement or as a

- 5 separate arbitration agreement. Essentially, an arbitration clause/agreement is a written submission agreed to by the parties to the contract, and, like other written submissions to arbitration, must be construed according to its language and in light of the circumstances in which it was made (See: *Heyam and Another Vs Darwins Ltd [1942] 1 All ER 337 at page 342*, by Viscount Simon L. C).

- 10 The Arbitration and Conciliation Act Cap 4 does not render a definition of an arbitration agreement. It provides for the form *(Section 3 (1) of the Arbitration and Conciliation Act).* The *UNCITRAL Model Law (1985, amended 2006),* upon which many jurisdictions have modeled their arbitration law, defines arbitration agreement as an agreement by the parties to submit to arbitration all or certain 15 disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. The *ICAMEK*

(Arbitration) Rules have adopted this definition.

The existence and the validity of an arbitration agreement should be determined primarily in light of the common intent of the parties, the requirement of good

20 faith and the belief that the person who signed the clause had the power to bind the company. (*See: Premium Nafta Products Ltd and Others Vs Fili Shipping Company Ltd and 30 Others [2007] UKHL 40*

The guiding principle is that the language in the dispute settlement Agreement 25 should determine whether the dispute is to be referred to an arbitral body or to a court. With respect to the present case, the dispute resolution provision contained within the tenancy agreement is at clause 10 and provides as follows;

"This agreement shall be governed by and construed in accordance with the laws of the Republic of Uganda and any dispute between the parties that is not amicably 30 *resolved shall be submitted to arbitration in accordance with the Arbitration and Conciliation Act, Cap 4 of the laws of Uganda".*

It goes ahead to say;

"f) Any dispute arising out of or in connection with this agreement including any question regarding its existence validity or termination shall be determined in 35 *accordance with the laws of the republic of Uganda by a court of competent jurisdiction in Uganda".*

- 5 Counsel for the plaintiff, in his oral submissions, to buttress his argument that the correct interpretation of the dispute resolution clause in the agreement, is that parties possess the discretion to elect either litigation or arbitration as the appropriate forum for dispute resolution and that the aggrieved party is entitled to choose the forum in which to pursue its claims, relied on the decision of this
- 10 court in *Attorney General v. Networth Consults Ltd., MA-1830-2022*, rendered by my learned brother.

In the above cited case, the dispute resolution clause stated that: *"Any dispute between the parties arising under or related to this contract that cannot be settled amicably may be referred to by either party to the adjudication/arbitration in accordance with the* 15 *provisions specified in the SCC"*. The Special Conditions then spelt out an elaborate set of rules and procedures for arbitration of disputes arising from the agreement. The learned Honourable Judge found that the

arbitration agreement between the parties was not capable of being performed within the meaning of section 5(1)(a) of the Arbitration and Conciliation Act. The Honourable Judge stated:

20 "In my view, the relevant clauses are not incomprehensible. Reading the parties' contract in full, it appears to me that the parties intended that, in the event of a dispute, and where amicable dispute resolution failed, recourse could be had to either arbitration or litigation. It appears from the contract that the initiating party is at liberty to decide how to initiate the dispute. Once they had made their election, the other party was obligated to defend or* 25 *counterclaim in the forum in which the proceedings had been began.*

I am not persuaded by the reasoning of my learned brother that the initiating party was at liberty to determine the mode of initiating the dispute; or the finding that the arbitration agreement was incapable of being performed. In standard form agreements comprising General Conditions Clauses and Special 30 Conditions Clauses, the latter clauses take precedence and are considered the negotiated and agreed position of the parties to the Contract unless expressed otherwise by the parties. Therefore, by executing the agreement the parties had agreed to arbitration as elaborated in the Special Conditions Clause. They did not have the liberty, at a later date, to decide how to initiate the dispute. 35 Therefore, the arbitration agreement in the matter handled by my learned brother was not ambiguous; but clear and capable of being performed, and the

5 case is as such distinguishable from the arbitration clause in the instant matter which requires the court's interpretation.

In the instant case, the dispute settlement clauses are reflective of two entirely different dispute resolution mechanisms and legal consequences. This necessitates the Court to interpret and assign meaning to the plain language of 10 each clause in question, and to determine their applicability to the present dispute. Through this interpretative process, the intention of the parties is

I note that, whereas, the first clause which provides for arbitration, specifically relates to disputes not resolved amicably, the second clause which provides for 15 courts of law is broad, including all disputes and issues such as existence, validity and termination of the agreement. I am not inclined to characterise the clauses as pathological arbitration agreements, as they are, in my view, relatively clear and capable of being given effect.

inevitably to be ascertained.

The dispute before this Honourable court arises from a purported breach of the 20 tenancy agreement, which dispute, as evidenced from the pleadings, was subjected to discussions and negotiations between the parties with a view to resolve the dispute but in vain. (see: *paragraphs 7 ii), 7 iv), 7 v), 7 vi) and 7 vii) of the written statement of defense, and paragraphs 4 e), 4 f) and 4 g) of the plaint).* The endeavours were a measure to determine the dispute amicably. Having failed, 25 the parties were, therefore, obligated to submit the same to arbitration in accordance with the Arbitration and Conciliation Act, Cap 4 of the laws of Uganda rather than to the court.

It follows therefore in accordance with section 5(1) of the Arbitration and Conciliation Act that where a matter before court is the subject of an arbitration 30 agreement, this Court is obligated to refer the matter to arbitration unless the court finds—that the arbitration agreement is null and void, inoperative or incapable of being performed; or that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration. (see:

Elizabeth Nkumbuga Vs. M/s J. General Enterprises Ltd, HCMA No. 78 of 2011).

35 Having established that the dispute in this suit is subject of an arbitration agreement, and the arbitration agreement is not null and void, inoperative or

5 incapable of being performed, I am of the view that this suit is barred by law for want of jurisdiction. I hereby order that the suit is stayed and the parties are directed to resolve the dispute by arbitration in accordance with the dispute settlement clause under the Agreement.

Dated, signed and delivered electronically this 5th day of June, 2025.

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