

UGANDA / JUDGMENT

Uganda Electricity Transmission Company Limited v Solcon E.A Limited (Arbitration Cause 41 of 2024) [2025] UGCommC 103 (22 May 2025)

[2025] UGCommC 103

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Arbitration Cause 41 of 2024

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA**(COMMERCIAL DIVISION)****ARBITRATION CAUSE NO. 0041 OF 2024****10 UGANDA ELECTRICITY TRANSMISSION COMPANY
LIMITED ::::::::::: ::::::::::: APPLICANT****VERSUS****15 SOLCON E. A LIMITED ::::::::::: RESPONDENT****BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA****20 RULING****Introduction**

This application was brought by way of Chamber Summons under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, Cap. 5 and rule 13 of the Arbitration Rules, seeking orders that:

1. The arbitral award dated 4th November, 2024, delivered by Ms. Ann Namara Musinguzi the Arbitrator in the dispute between the Respondent (as claimant) and the Applicant (as Respondent/Counterclaimant) and any orders deriving thereunder,

30 be set aside.

2. Costs of this application be provided for.

Background

- 35 The background of the application is detailed in the affidavit in support deposed by **Mr. Rwabushenyi Edward**, a lawyer and the Applicant's Manager Litigation, and is summarized below:

- 1. That the Applicant seeks to set aside an arbitral award dated 4th 40 November, 2024, delivered by Ms. Ann Namara Musinguzi (the Arbitrator) on the ground that her award of UGX 403,256,000/= to

5 the Respondent in prolongation costs/special damages is perverse, patently illegal, illogical, unrooted in evidence and law, supportive of unjust enrichment, and ultimately contrary to public policy.

2. That by a contract dated 15th March, 2019, the Applicant contracted 10 the Respondent to carry out electro-mechanical works at Mirama, Bujagali and Tororo Substations.
3. That the contract was initially for 8 months, however, for multiple 15 reasons including the impact of COVID-19, a force majeure event, it was mutually extended on several occasions on a "no extra-costs" basis agreed to by the Respondent.
- 4. That by 8th June, 2022, more than three years after the contract 20 execution, the Respondent had failed to achieve substantial completion of the works and was only 12 days away from the final deadline of 20th June, 2022, which deadline it was clear was never going to be met. Further, that the Respondent had by this date not extended its Performance Guarantee which was equally expiring on 25 20th June, 2022 upon which the Applicant would have had no valid recourse to it.
- 5. That consequently, the Applicant made a call on the Performance Guarantee based on the Respondent's fundamental breach.
- 6. That the Respondent then commenced adjudication proceedings against the Applicant under the tiered arbitration clause, asserting that the Applicant had acted in breach of the contract in encashing the Performance Guarantee, and seeking payment of a wide array of 35 damages. Further, that an initial adjudication award was delivered by Eng. Hans JWB Mwesigwa on 29th June, 2023. However, pursuant to the arbitration clause, the Applicant elected to refer the

- 5 dispute to arbitration and the parties agreed to the joint appointment of Ms. Ann Namara Musinguzi as the sole Arbitrator.
- 7. That the pleadings were duly filed before the Arbitrator and in their statement of claim, the Respondent sought UGX 403,256,000/= as 10 prolongation costs on the alleged basis that it constituted sums it had paid to its employees in salaries and allowances due to project
- 8. That in its reply, the Applicant expressly denied the claim of UGX 15 403,256,000/=.
- 9. That the arbitrator found and held that there were serious gaps and discrepancies in the purported evidence of alleged payments of salaries and allowances in the amount of UGX 403,256,000/=.
- 10. That despite the above, the Arbitrator shockingly and without basis proceeded to award the full sum of UGX 403,256,000/= in prolongation costs.
- 25 In reply, the Respondent, through an affidavit deponed by **Mr. Nabil Alam**, its Managing Director, opposed the application contending that:
 - 1. The application is not tenable as it does not raise grounds for setting aside the arbitral award, and the Respondent shall move the same to be dismissed with costs.
 - 30 2. The averments in paragraphs 5-18 go to the root of the findings of the Arbitrator, for which in an application for setting aside, it is not permissible for the Court to examine the correctness of the findings of the Arbitrator as if it is sitting in an appeal over the Arbitrator's findings.
 - 3. Nothing in the final award dated 4th November, 2024, awarding Solcon E. A Ltd prolongation costs of UGX 403,256,000/= is

delays.

- 5 shocking, the claimant in the arbitration proceedings presented its claim and supporting documents, and a witness testimony on the basis of the claim.
- 4. The entire application has no merit and that the application be 10 dismissed with costs, and the final award dated 4th November, 2024, be recognized and enforced as a decree of this Court.

In its affidavit in rejoinder deponed by **Mr. Rwabushenyi Edward**, the Applicant reiterated its earlier averments and added that:

- 1. It is a proper and well long-established principle/ground that an 15 arbitral award can be set aside for being contrary to public policy as a result of its being perverse, illogical, irrational, patently, unrooted in evidence or law, or supportive of unjust enrichment and consequently, the Applicant's application is well founded.

- 20 2. The application raises valid grounds for setting aside of an arbitral award and further that the award of UGX 403,256,000/= is contrary to public policy to the extent that the award is not based on any evidence.

Representation

- 25 The Applicant was represented by **M/s Citadel Advocates**, while the Respondent was represented by **M/s Kaggwa & Kaggwa Advocates**. Both parties were directed to file their written submissions, which they did, and the same have been considered by Court.
- 30

Issues for Determination

1. Whether the arbitral award dated 4th November, 2024, is perverse, premised on a manifest disregard of law, arbitrary, capricious,
 - 5 inconsistent, unsupported by evidence, supportive of unjust enrichment and thus contrary to public policy?
- 2. What remedies are available to the parties?
- 10

Issue No. 1: Whether the arbitral award dated 4th November, 2024 is perverse, premised on a manifest disregard of law, arbitrary, capricious, inconsistent, unsupported by evidence, supportive of unjust enrichment and thus contrary to public policy?

Applicant's submissions

Learned Counsel for the Applicant relied on **Section 34 of the Arbitration and Conciliation Act** that provides for grounds under which an arbitral award may be set aside. That **Section 34(2)(b) (ii)** stipulates that an arbitral award may be set aside if the Court finds that the award conflicts with the public policy of Uganda.

Learned Counsel further referred this Court to several decisions including,

- the cases of **Mbale Resort Hotel Ltd Vs Babcon Uganda Ltd*, HCMA No.* 25 *265 of 2010, *Airtel Uganda Limited Vs Opportunity Bank Uganda Limited*, Arbitration Cause No. 12 of 2023* **and** **Kilembe Mines Limited Vs B. M Steel Limited*, HCMC No. 2 of 2005*, for the propositions that, a manifest disregard of law and glaring errors of law on the face of an award are proper basis upon which to set aside an award. That granting damages 30 on the assumption that they are not challenged instead of based on a
- proper evaluation of sufficient evidence is also a proper basis upon which an award can be set aside by this Court to avoid unjust enrichment and to correct a serious irregularity.

- 35 Learned Counsel submitted that in the above authorities, this Court recognized that it had a duty to set aside awards that transgress the
- 5 acceptable boundaries and contravene public policy because they suffer from manifest disregard of law, glaring errors on the face of the record, perversity, and granting of damages on an improper basis instead of proper assessment of evidence.
- 10 Learned Counsel then quoted the case of **Bemuga Forwarders Limited Vs Sany International Development Limited HCMA No. 99 of 2024**, in which the Court stated that;
"...an award warrants interference by the Court only when it contravenes a substantive provision of law or is patently illegal or* 15 *shocks the conscience of the Court*."

Further, that in the case of **Kampala International University Vs Housing Finance Company Limited, Arbitration Causes No. 38 and 46 of 2024**, the Court guided that:

"...in order to succeed on ground of a manifest disregard of the law,* 20 *the Applicant must show that the circumstances of the case give rise to a clear inference that the tribunal made its erroneous findings of law, in conscious disregard of the law chosen by the parties, and intentionally reached a result contrary to the chosen law that comported with their own notions of justice and equity,* 25 *and disguised this equitable decision making as a purported application of the law*."

Owing to the above, Learned Counsel contended that the award in issue contravenes the above requirements as there was a manifest error of law. He argued that the damages granted were based on a manifest error of law 30 instead of an evidential basis. That the Arbitrator ignored the clear and well-defined rules on admissions, which apply under Ugandan law, the substantive law governing the dispute. Relying on the cases of **Lake Oil**

Uganda Ltd Vs Don (U) Ltd, HCMA No. 685 of 2024 and John Okalany

5 **Vs Civil Aviation Authority and Another, HCMC No. 111 of 2015,** among others, Learned Counsel submitted on the principles relating to admissions.

Learned Counsel submitted that the sole basis upon which the Arbitrator 10 herein granted the sum of UGX 403,256,000/= in prolongation costs, which special damages required strict proof, was that the Applicant had not disputed the costs incurred by Solcon E. A Limited and had therefore admitted them.

- 15 That for the Arbitrator's position to hold, there had to be a clear, unambiguous, unequivocal, explicit, and doubtless admission by the Applicant that those prolongation costs had been incurred. However, that to the contrary, the Applicant never made such an admission. That from its pleadings, examination in chief, cross-examination and submissions in

- 20 reply, the Applicant disputed the money in issue and that the Respondent barely addressed the same. To that effect, Learned Counsel submitted on the law regarding admissions.

In conclusion, Learned Counsel contended that the Arbitrator's reliance 25 on a non-existent admission to impose the prolongation costs liability is irregular to the extent that it amounts to a denial of a right to be heard and a denial of natural justice because it is a fundamental perversion of what the Applicant's position was.

30 Respondent's submissions Learned Counsel for the Respondent also relied on **Sections 9, 34(2) (b) and 36 of the Arbitration and Conciliation Act.**

Learned Counsel then submitted that though the Applicant's main ground 35 is that the arbitral award is void for being contrary to public policy, there

5 is nothing that shows that the said award is against the public policy of Uganda.

Learned Counsel also relied on the case of **Kampala International University Vs Housing Finance Company Limited (supra)**, in which the 10 Court observed that, an award will be considered to conflict with public policy if, inter alia, the making of the award was induced or affected by fraud or corruption, or, it is in contravention of a fundamental policy of the Constitution or other laws of Uganda, or, it is in conflict with the most basic notions of morality or justice, including acts which would be 15 generally detrimental or harmful to the citizens of the Country (the general public), e.g. promotion of unlawful conduct and breach of law. That in other words, "public policy" covers only fundamental principles that are widely recognized and should underlie any system of law according to the prevailing conceptions in Uganda. That an award warrants interference by 20 the Court only when it contravenes a substantive provision of law or is patently illegal or shocks the conscience of the Court.

Learned Counsel added that **Section 28(5) of the Arbitration and Conciliation Act**, is to the effect that in all cases, the arbitral tribunal 25 shall decide in accordance with the terms of the particular contract and shall take into account the usages of the trade applicable to the particular transaction. That in the instant case, the award of UGX 403,256,000/= as prolongation costs, resulted from the Applicant's failure to provide material on site in time, which led to increased overheads in salaries by 30 the Respondent. That the Respondent adduced evidence of the staff it had on site during the Project and presented supporting documents in its claim.

- 5 Learned Counsel also contended that the manner in which the grounds in the application were stated, portrays this application as a disguised appeal, yet the Court has no powers to sit in an appellate position. He relied on the cases of **Cairo Bank Uganda Limited Vs CADS Ventures Limited Misc. Cause No. 48 of 2023** and **Kampala International**
- 10 **University Vs Housing Finance Company Limited (supra)** to support his submission.

In conclusion, Learned Counsel prayed for the dismissal of the application with costs for failure to satisfy the grounds laid out in **Section 34 of the Arbitration and Conciliation Act.**

Applicant's submissions in rejoinder

In rejoinder, Learned Counsel for the Applicant reiterated his earlier submissions that the Respondent does not contest the clear law on admissions that was manifestly disregarded by the Arbitrator.

Learned Counsel added that the application is not a disguised appeal as submitted by Counsel for the Respondent. That the case of **Cairo Bank Uganda Limited Vs CADS Ventures Limited (supra)** cited by the Respondent's Counsel, is distinguishable from the instant one as the 25 Applicant's grounds therein were based on grounds of appeal. Learned Counsel also reiterated his submissions on the finality of arbitral awards and added that they are not absolute arguing that if it was so, the arbitration system would become a common vehicle for abuse of rights and would soon crumble and be shunned.

That when parties agree to arbitration, they do not bind themselves to perverse, arbitrary and capricious awards or awards based on manifest disregard of law merely because of finality.

5 Analysis and Determination

I have considered this application, the affidavit in reply and rejoinder and the submissions of both parties.

As stipulated under **Section 9 of the Arbitration and Conciliation Act**, 10 except as provided by the Act, Courts are not permitted to intervene in matters governed by the Act. To that effect, **Section 34(2)(b)(ii) of the Arbitration and Conciliation Act** provides that an arbitral award may be set aside if Court finds that the award is in conflict with the public policy of Uganda.

- 15 As held by **Hon. Justice Stephen Mubiru** in the case of **Uganda Development Corporation Vs Rocktrust Contractors Limited, Misc. Application No. 85 of 2019**:
- 20 *"In arbitration, the autonomy of the parties is kept at the highest pedestal. Therefore, any Court adjudicating upon the validity of an arbitral award is not to function as an appellate Court, but merely is to decide upon the legality of the validity of the arbitral award*."*
- 25 The above emphasizes the finality of arbitration awards to which the parties are obliged to abide and protect the parties' independence in contract making. However, as stated in the case of **Parsha International Ltd T/a Champion Bet/Slots Vs Homebet Limited, Misc. Application No. 598 of 2021**, although the Court should bow to the interpretation 30 that the Arbitrator has rendered, it is also the function of the Court to make certain that the enforcement of the arbitral award will not constitute

a violation of law.

In the case of *Kampala International University Vs Housing Finance*

35 *Company Limited (supra)*, **His Lordship Stephen Mubiru**, while relying on the cases of *Egerton Vs Earl of Brownlow [1853] Eng R 885, [1853]*

- 5 *10 ER 359 and Cooke Vs Turner [1845] 60 Eng. Rep.449 at 502*, explained public policy as that principle of law which holds that no subject can lawfully do that which tends to be injurious to the public, or against the public good, which may be termed the policy of law or public policy in relation to the administration of the law. He added that certain acts or
- 10 contracts are said to be against the public if they tend to promote breach of the law, of the policy behind a law or tend to harm the State or its citizens. That the definition of public policy represents a certain topic that affects public benefit and public interest. (See also *Parsha International*

Ltd T/a Champion Bet/Slots Vs Homebet Limited (supra).

- 15 The Learned Judge in the above case, also guided that an arbitral award will be set aside on grounds of inconsistency with public policy if it is shown that the award was; (a) inconsistent with the Constitution or other laws of Uganda, whether written or unwritten, or, (b) is inimical to the
- 20 national interest of Uganda or, (c) is contrary to justice and morality. The Learned Judge, however, cautioned that the public policy exception must be interpreted narrowly, or else it can be used opportunistically by award debtors as a gateway to review the merits of the award. It is therefore limited to those imperative or mandatory rules, from which the parties
- 25 cannot derogate.

Guided by the above authorities, I shall determine the application as hereunder.

30 The Applicant herein seeks an order to set aside the arbitral award dated 4th November, 2024, delivered by Ms. Ann Namara Musunguzi (the Arbitrator). As per the pleadings and the annexures thereto, the application is premised on the background that, on 15th March, 2019, the Applicant contracted the Respondent to complete its electro-mechanical 35 works at Mirama, Tororo, and Bujagali Substations under the Nelsap

- 5 Interconnection Project Lot C, at a contract price of UGX 3,289,225,625/= exclusive of taxes and UGX 3,881,286,238/= inclusive of all applicable taxes. The contract was for eight months. However, on several occasions, the completion time was extended at the Respondent's request; these extensions occurred from 23rd October, 2019, until 1st February, 2022,
- 10 when Change Order No. 3 was granted, extending the new date of substantial completion to 20th June, 2022. By 8th June, 2022, more than three years after the contract execution, the Respondent had failed to achieve substantial completion of the works. By this date, the Respondent had not extended its Performance Guarantee, which was set to expire on

- 15 20th June, 2022. Consequently, the Applicant made a call on the Performance Guarantee.

Aggrieved by the Applicant's conduct, the Respondent commenced adjudication proceedings against the Applicant under the tiered arbitration clause, contending breach of contract. The initial adjudication

award was delivered by Eng. Hans JWB Mwesigwa on 29th 20 , June, 2023. However, according to the arbitration clause in the agreement, the Respondent referred the dispute to arbitration, and the parties agreed to the joint appointment of Ms. Ann Namara Musinguzi as the sole Arbitrator. Among the remedies sought by the Respondent was payment of UGX 25 403,256,000/= as prolongation costs.

In her award dated 4th November, 2024, the Arbitrator, among other orders, ordered the Applicant to pay the Respondent herein UGX 403,256,000/= as prolongation costs relating to salary overheads. The 30 Applicant now seeks an order to set aside the arbitral award of the said sum, contending that it is inconsistent with public policy.

5 In his submissions, Learned Counsel for the Applicant emphasized that the sole basis upon which the Arbitrator granted UGX 403,256,000/=, in prolongation costs, which were special damages requiring strict proof, was that the Applicant had not disputed those costs.

However, that in its reply to the statement of claim, throughout the trial,

10 its evidence and submissions, the Applicant disputed the sum and made no such admission.

Learned Counsel for the Applicant argued that the Arbitrator ignored the clear and well-defined rules on admissions which apply under Ugandan

- 15 law, the substantive law governing the dispute. That it is a well-established law that an admission must be clear, unambiguous and unequivocal and must state precisely what is being admitted, and that an admission must be explicit and not open to doubt. Learned Counsel referred this Court to the cases of **Lake Oil Uganda Limited Vs Don (U) Limited (supra)*, John*
- 20 **Okalany Vs Civil Aviation Authority (supra)* and *Bigala Frediman Vs Lornah Namuwenge, HCCS No. 98 of 2020**, among others, for more principles on admissions. That it was perverse, premised on manifest disregard of law, arbitrary, capricious, inconsistent, and unsupported by evidence.

On the other hand, the Respondent opposed the application, contending that it lacks merit. That there is nothing that shows how the said award is against the public policy in Uganda and that it is a disguised appeal.

I have examined the arbitral award in issue attached to the affidavit in 30 support as annexure "I". The contention of the Applicant is contained in paragraph (j) at page 73 of the award, wherein the Arbitrator stated that;

> "The Tribunal finds that in as much as there are discrepancies in relation to the personnel, the only payments that are contested by"

- 5 "The Respondent relate to the following "unnamed persons"- the three Senior Engineers, one Project Accountant and one Project Head. For the other named personnel, the Respondent does not dispute that they were paid."
- 10 The Arbitrator then found that;
- "(a) The Claimant incurred prolongation costs as a result of the Respondent's delay to provide materials and COVID-19 (force majeure-Employer's risk) which extended the contract for over two years from the agreed period of eight months."
- "(b) These prolonged costs related to salaries of employees that the claimant had to keep meeting all through the project."
- 20 "(c) The claimant was already granted an extension of time for force majeure as a delay event which is the contractual remedy."
- "(d) In respect of the Respondent's delay in providing materials, the Claimant is entitled to prolongation costs."
- "(e) The Claimant has not been able to substantiate the claims for the key personnel amounting to USD 172,780, seeing that no evidence was led to show who they were, how many they were and for how long they were employed. This claim is therefore disallowed in total."
- (f) "The claims in respect to the other personnel's salaries and allowances to the tune of UGX 403,256,000/= (Uganda Shillings 35 Four Hundred Three Million Two Hundred Fifty-Six Thousand) are allowed."

As shown above, the admission alleged by the Applicant is derived from the Arbitrator's holding that, "For the other named personnel, the Respondent does not dispute that they were paid."

5 From the argument of the Applicant's Learned Counsel, the statement that the Respondent/Applicant herein did not dispute the costs of the other personnel is perceived to have meant an admission.

My observation is that the above holding resulted from the Arbitrator's analysis of the pleadings and evidence adduced by both parties, as 10 reflected on pages 70 to 73. The statement does not infer that the Applicant made admissions to the costs in issue, but only contested the payments of unnamed persons, that is, the three Senior Engineers, one Project Accountant and one Project Head and never disputed the remaining personnel. It was not an admission, and the Arbitrator did not refer to any 15 law to portray an admission. The Arbitrator interpreted the Contract and

Arising from the submissions of Learned Counsel for the Applicant, it is observed that they delve into evaluating the evidence regarding whether or not the prolongation costs were correctly awarded by the Arbitrator. If this

20 Court were to engage in the same inquiry, it would be sitting in an appellate position, and which would amount to an illegality.

Owing to the above observations, it is my finding that the ground relied upon by the Applicant praying for setting aside the arbitral award is not portrayed in the arbitration award within the meaning of **Section**

25 34(2)(b)(ii) of the Arbitration and Conciliation Act.

analyzed the evidence before her and made a finding.

Accordingly, this issue is answered in the negative.

Issue No.2: What remedies are available to the parties? Section 36 of the Arbitration and Conciliation Act provides that;

"*Where the time for making an application to set aside the arbitral* 30 *award under Section 34 has expired, or that application having*

5 *been made, it has been refused, the award shall be enforced in the same manner as if it were a decree of the Court*."

(See: *Parsha International Ltd T/a Champion Bet/Slot Vs Homebet Limited (supra*).

- 10 Accordingly, in light of the above and having found Issue No. 1 in the negative, this application is hereby dismissed with the following orders:
- 1. The parties are hereby granted leave to enforce the arbitral award dated 4th November, 2024, delivered by Ms. Ann Namara Musinguzi
- 15 (the Arbitrator).
- 2. Costs of the application are awarded to the Respondent.
- 20 I so order.

Dated, signed and delivered electronically via ECCMIS this **22nd** day of **May, 2025**.

Patience T. E. Rubagumya **JUDGE** 22/05/2025 6:45am

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Prepared on 11 October 2026 · Esheria