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# CONSTRUCTION ARBITRATION IN UGANDA: A JUDICIAL PERSPECTIVE



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## KEY JUDICIAL DECISIONS IN RELATION TO CONSTRUCTION ARBITRATION

- ❖ **Adler Construction Company Limited v Zenitaka Corporation & Another, Misc. Cause No 91/2005 [2025] UGCommC 3 (enforcement of an unconditional advance payment guarantee)**
- ❖ **Kampala International University v Housing Finance Company Limited, Arbitration Cause Nos 0038/2024 and 0046/2024 (consolidated) [2025] UGCommC 19 (recognition and enforcement of a foreign arbitral award)**
- ❖ **Uganda Electricity Transmission Company Limited v Solcon E.A Limited, Arbitration Cause No 0041/2024 [2025] UGCommC 103 (setting aside award: grounds of public policy and not within terms of reference to arbitration)**
- ❖ **China Railway 18th Bureau (Group) Company Limited v Tumo Technical Services Limited, Misc. Cause No 72/2025 [2025] UGCommC 393 (setting aside award: grounds of public policy and bias)**



- ❖ **Archstone Solutions Limited v Mutukula Regional Market Limited & Another, HCCS No 0316/2024 [2025] UGCommC 113 (competing dispute resolution clauses)**
- ❖ **Makindye Sabagabo Municipal Council v Busenvi Enterprises Limited, Misc. Appln No 475/2022 [2025] UGHCCD 99 (competing dispute resolution clauses)**
- ❖ **Roko Construction Limited v Pearl Marina Estates Limited, Taxation Appln No 0471/2024 [2025] UGHC 141 (arbitration costs)**
- ❖ **Canaf Group Inc. (formerly Uganda Gold Mining Limited) v. Kilembe Mines Limited, Misc. Cause No 0047/2023 (setting aside award: grounds of public policy)**



## Adler Construction Company Limited v Zenitaka Corporation & Another [2025] UGCommC 3

- ❖ The dispute between the Applicant and 1<sup>st</sup> Respondent arose from a subcontract agreement between the parties that was executed on 26<sup>th</sup> November 2024, wherein the Applicant was to carry out works for the project for the development of an irrigation system in the Atari Basin area.
- ❖ The Applicant procured an Advance Payment Bond and a Performance Bond respectively from the 2<sup>nd</sup> Respondent in favour of the 1<sup>st</sup> Respondent.
- ❖ A dispute arose and the Applicant filed an Application, seeking interim measures of protection, pursuant to Section 6 of the *Arbitration and Conciliation Act Cap 5*.
- ❖ The Court, in arriving at its decision, relied upon 3 pertinent factors that must be considered before injunctions of such nature are to be granted and these are; whether there is a serious question to be arbitrated, whether there is an imminent risk of irreparable loss and the course of action favoured on a balance of convenience.



## Adler Construction Company Limited v Zenitaka Corporation & Another [2025] UGCommC 3

- ❖ In respect to whether there was an imminent risk of irreparable loss, the Court found that the Applicant had not adduced any special circumstances to prove the need to stop the cashing of the Advance Payment Bond since by it providing the said guarantee, it agreed to take on the financial risk until any such disputes are resolved and that further, the Applicant acknowledged having occasioned delays on the works, which was in breach of the subcontract and that therefore, the call on the Advance Payment Bond was not in bad faith.
- ❖ In respect to the course of action favoured on a balance of convenience, Court found in favour of the 1<sup>st</sup> Respondent, agreeing with its argument that the project in issue was a Government project concerning public interest and that further, allowing an injunction as an interim measure of protection, in order to restrain a call on a guarantee that is intended to act as a risk allocation device would defeat the purpose of that security (as was held in the case of *AC Yafeng Construction Limited v The Registered Trustees of Living Word Assembly Church & Another*, HCMA No. 01/2021)



# **Kampala International University v Housing Finance Company Limited, Arbitration Causes Nos 0038/2024 and 0046/2024 (consolidated) [2025] UGCommC 19**

- ❖ The arbitration causes arose from an arbitral award handed down in Kenya on 17<sup>th</sup> September 2019.
- ❖ One of the applications related to recognition and enforcement of a foreign award delivered in Kenya whereas the second related to challenging of the enforcement.
- ❖ The ground for challenge was that the seat of the arbitration had set aside part of the award on grounds that the Tribunal did not have the jurisdiction to hear and determine that part of the award.
- ❖ The Court rejected the challenge; stating that it was not bound by the “foreign judgment” passed by the seat but was rather bound under the 1958 *New York Convention* to enforce the “foreign award” in its entirety as delivered by the arbitrator.



## **Uganda Electricity Transmission Company Limited v Solcon E.A Limited, Arbitration Cause No 0041/2024 [2025] UGCommC 103**

- ❖ Application to set aside an arbitral award on grounds of public policy; specifically that the award of prolongation costs was unjust enrichment and hence contrary to public policy.
- ❖ It was the Applicant's case that the arbitrator in her award made references to admissions made by the Applicant as Claimant without regard to the legal principle that admissions must be clear and unequivocal.
- ❖ It was the Court's finding that the Arbitrator interpreted the contract, analyzed the evidence and made a finding. That if the Court were to delve into evaluating the evidence, it would be sitting as an appellate Court and this would amount to an illegality.
- ❖ The Application was dismissed and the Award enforced.



# **China Railway 18th Bureau (Group) Company Limited v Tumo Technical Services Limited, Misc. Cause No 72/2025 [2025]**

## **UGCommC 393**

- ❖ The application arose from arbitration No CAD/ARB/44/2021 to set aside the arbitral award rendered on grounds of public policy, specifically that the arbitrator disregarded the doctrine of *res judicata* and the principle of finality of litigation.
- ❖ The dispute that the arbitrator determined related to retention sums. It was the position of the Applicant that the dispute to do with retention sums had been decided in a previous arbitration which was premised on the same facts and hence the latter award was contrary to *res judicata* (contrary to Section 7 of the *Civil Procedure Act*).
- ❖ The Court dismissed the application, finding that the earlier dispute related to breach of contract whereas the latter one was specific to retention.
- ❖ On bias, Court found that it must be actual or reasonable and not a mere suspicion. Mathematical errors did not amount to bias and the applicant should have applied to correct them (section 33 of the *Arbitration Act*)
- ❖ The Court emphasized that it cannot “open up” the award. The award was enforced.



## **Archstone Solutions Limited v Mutukula Regional Market Limited & Another, HCCS No 0316/2024 [2025] UGCommC 113**

- ❖ This was a dispute in relation to a construction contract executed by the parties.
- ❖ The Plaintiff filed a Summary Suit and the Defendant filed an Application for unconditional leave to appear and defend. The Application was dismissed for want of prosecution.
- ❖ The Plaintiff prayed for Judgment in the Summary Suit. Court however pointed out to the Plaintiff that there were two competing dispute resolution clauses.
- ❖ The Contract provided for Arbitration or Litigation. However, the Special Conditions of Contract specifically provided for arbitration.
- ❖ The Court considered the priority accorded to the Special Conditions of Contract and referred the matter to arbitration.
- ❖ Further, the Court stated that where there are two competing dispute resolution clauses, the role of Court is not to oust arbitration but to oversee the arbitration process.



## **Makindye Sabagabo Municipal Council v Busenvi Enterprises Limited, Misc. Appln No 475/2022 [2025] UGHCCD 99**

- ❖ The Application arose from Civil Suit No 400/2019. The Defendant raised a preliminary objection that there was a valid and enforceable arbitration agreement under the Arbitration and Conciliation Act and that the case should be referred to Arbitration. The Agreement was specifically contained in the General Conditions of the Contract.
- ❖ However, the Special Conditions of Contract ousted arbitration in respect to smaller contracts where the PDE had decided not to appoint an Adjudicator. In such cases, the parties recourse was to Court.
- ❖ In this case, the Court found that both parties had abandoned all dispute resolution mechanisms in the contract; seeing that no Adjudicator had been appointed and also seeing that none of the parties had engaged in amicable settlement which was a precursor to litigation under the Special Conditions of Contract. The Court thus found that it had jurisdiction arising from the conduct of the parties because the direct chain link to arbitration had been broken.



## **Roko Construction Limited v Pearl Marina Estates Limited, Taxation Appln No 0471/2024 [2025] UGHC 141**

- ❖ The taxation application arose from Misc. Cause No 0046/2023, in turn arising from CAD/ARB/No 4/2022.
- ❖ The Applicant was a successful party in an arbitral award issued on 19<sup>th</sup> May 2023 wherein he was also awarded costs. The Applicant subsequently filed a bill of costs. The Respondent raised a preliminary objection that the Court had no jurisdiction to tax costs arising out of arbitration.
- ❖ The objection premised on Section 31(9)(a) and (b) and Section 33(4) of the *Arbitration and Conciliation Act Cap 5*.
- ❖ The Court upheld the objection and dismissed the application for costs; stating that the Registrar did not have power to grant costs.



## **Canaf Group Inc. (formerly Uganda Gold Mining Limited) v. Kilembe Mines Limited, Misc. Cause No 0047/2023**

- ❖ This dispute arose from the interpretation of the terms of a mineral exploration and feasibility study agreement executed by the parties on 27<sup>th</sup> September 2004. The Arbitrator found in favour of the Respondent.
- ❖ An application to set aside an arbitral award on grounds of public policy and the award not falling within the terms of reference to Arbitration was filed.
- ❖ The Court found that the issue of illegality was neither pleaded by the parties nor included among the issues framed in the joint scheduling memorandum. The Arbitrator neither amended the list of issues nor gave adequate notice to the parties that he intended to determine the legality of the entire agreement. Raising and resolving the issue of illegality after the close of hearings, without full and informed participation by the parties, violated the parties' right to be heard.
- ❖ The award was thus set aside.



## Conclusion

- ❖ The discussed arbitration matters that ended up before the courts showcase arbitration at work (and, as alternative dispute resolution (ADR) mechanism, it works for the parties). The matters also, by the subject-matter, underscore a growing construction sector (from buildings, roads, to electricity and telecom infrastructure) and reflect the underlying need to resolve any emerging disputes expeditiously by arbitration.
- ❖ The Courts have upheld the finality of Arbitration; interfering with it only in very limited circumstances.





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**Thank You!**