

LEGAL ALERT

UGANDA ARBITRATION LAW

May 2026

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COMMERCIAL COURT DECLINES TO REFER PAYMENT DISPUTE TO ARBITRATION, FINDING NO GENUINE DISPUTE

In a recent Judgment^[1] obtained in favour of MMAKS Advocates' client, Mehta Electricals, the Uganda Commercial Court declined to refer to arbitration a USD 600,000 component of a larger electrical works payments dispute because the Defendant, who sought the referral to arbitration, had no credible or plausible basis for contesting the validity and enforceability of the underlying issued interim payment certificates, leading to a conclusion that there was no (genuine) dispute to refer to arbitration as the claim was essentially admitted.

The Defendant did not deny the issuance of the payment certificates on which the claim was based, and had not subsequently revised or invalidated them, claiming instead that the certificates did not represent an ascertained due debt but rather confirmed mere performance of works, an argument that was found by the Court to be untenable.

The Court held that the issuance of the certificates not being denied, and there being no credible evidence demonstrating a subsequent revision or invalidation, there was no (genuine) dispute to refer to arbitration and the claim was essentially admitted.

The Court's decision suggests strongly that there is no obligation under Section 5 of the Arbitration and Conciliation Act to refer a non-genuine dispute to arbitration, particularly where the claim is admitted directly or by necessary inference through the absence of any plausible basis for its contestation. We set out the facts, key holdings and takeaways.

The Facts

The Plaintiff, Mehta Electricals Ltd, and the Defendant, Roko Construction Limited, entered into a sub-contract for the supply of electrical works and services at a hotel at Entebbe. The sub-contract contained an arbitration clause.

Works were executed and payment certificates issued in the amount of USD 3m of which an unpaid balance of nearly USD 600,000 (including retention) remained outstanding.

Roko resisted the claim on multiple bases one of which was that there was an arbitration clause which required that the dispute be referred to arbitration. Roko, however, did not file a formal application for referral of the dispute to arbitration and the objection was ultimately framed as an issue for determination in the Court's final judgment.

^[1] *Mehta Electricals Ltd vs Roko Construction Limited, HCCS No. 226 of 2022.*

Arguments

The matter proceeded ex parte by order of the Court upon Roko's dilatory conduct. On behalf of Mehta, we argued that there was no genuine dispute for referral to arbitration in the face of Roko's multiple admissions of indebtedness, including the issued payment certificates, the making of part payments, a subsequent reconciliation exercise, and email communications.

We further argued that in any event, the right to pursue arbitration was waived by Roko's failure to file and timely pursue a formal application for the referral to arbitration, evincing an abandonment of the issue. Moreover, the suit had proceeded ex parte due to Roko's non-compliance with court directives.

The Court's decision

The Court agreed with our submission, holding that Roko had not disputed issuance of the payment certificates and had not subsequently revised or invalidated them. Its argument that the certificates merely evidenced the performance of works but not the payable sums was facially false as the certificates not only indicated the sums payable and the due dates for payment but were also approved by the relevant officers.

The Court thus found that Roko had in essence admitted the claim and that there was therefore no (genuine) dispute to refer to arbitration.

In a collateral holding, the Court also held that a clause in a subcontract stating that the subcontract is based on "the main contract documents so far as they relate to the subcontract" was not specific enough to incorporate the arbitration clause in the main contract into the subcontract; more specificity is required as opposed to a general incorporation clause.

Key takeaways

The Court's decision suggests strongly that there is no obligation under Section 5 of the Arbitration and Conciliation Act to refer a clearly non-genuine dispute to arbitration. At present, this covers claims that are either directly or by necessary inference admitted.

Practitioners are advised to look out for direct or necessarily inferred admissions of claims, especially where no credible basis for contestation of a claim is or can be put forward, as a possible avenue for resisting referral to arbitration. This can be useful where the claim put forward is sought to be made out by summary procedure to expedite the issuance of a final decree.

On the other hand, practitioners seeking referral to arbitration are advised to demonstrate, in a referral application, that the dispute is in fact genuine and that a plausible defence to the claim or a plausible counterclaim does in fact exist.

In relation to the holding on incorporation of arbitration clauses/agreements by reference, practitioners are advised to employ more express referral language which unambiguously incorporates not only general clauses but also the dispute resolution mechanism in the relevant document.

Mehta Electricals was represented by our Litigation Partner, Timothy Kanyerezi Masembe, and Associates, Joel Mucunguzi, Hussein D. Gulam, FCI Arb, and Eriya Mikka.

Contact Us

Should you have any questions regarding the information in this legal alert, please do not hesitate to contact:



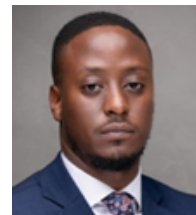
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