



Legal Insights

Key Arbitration Caselaw Developments in Uganda 2023-2024

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KEY ARBITRATION CASELAW DEVELOPMENTS IN UGANDA 2023-2024

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In this article, the first of a series, we analyse recent caselaw developments in Uganda's Arbitration Law landscape, starting with an overview of the general legal system.

An Overview of Uganda's Arbitration Legal System

Uganda's legal system follows the common law tradition where binding legal rules are gradually developed by a hierarchical judiciary that interprets and applies the Ugandan Constitution, statutes passed by Parliament, applicable international treaties, subsidiary laws, the English Common Law and doctrines of Equity, and in limited circumstances, local customary law.

In terms of Arbitration Law, Uganda is a member of the New York Convention which means that foreign New York Convention Awards are easily enforceable in Uganda and vice versa. Uganda is also a member of the ICSID Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States).

The Arbitration and Conciliation Act, Cap. 4, which commenced in the year 2000, is the governing domestic statute on arbitration. It covers both domestic and international arbitration and further domesticates the New York and ICSID Conventions.

As with many countries around the globe, Uganda's Arbitration Act is based on the UNCITRAL Model Law and its courts generally refrain from interfering with arbitration matters and awards save in well circumscribed instances.

Uganda's specialised Commercial Court/Division is charged with consideration of applications to enforce or to set aside commercial arbitration awards and is the main source of the existing arbitration caselaw.

With this brief introduction, we now address the recent caselaw developments in Uganda's Arbitration Law landscape.

Recent Developments

With an increased number of post-arbitration rulings in applications seeking to set aside domestic awards or to resist the enforcement of foreign awards, the Arbitration Law landscape in Uganda continues to develop into a more comprehensive body of law.

We analyse key holdings drawn from the leading cases decided in the 2023-2024 period. The majority of the rulings reviewed focus on the various grounds upon which a domestic arbitration award may be set aside or based on which the enforcement of a foreign award may be refused as well as the extent of judicial participation in the arbitral process and related matters.

We have structured our case analysis thematically.

Setting-aside vs Resisting Enforcement of Awards

The High Court has, in *Aya Investments (U) Limited vs Industrial Development Corporation of South Africa Ltd*ⁱ and *Great Lakes Energy Company NV vs MSS Xsabo Power Ltd and 4 others*,ⁱⁱ held that under Uganda law, an arbitral award can only be *set aside* at the seat of arbitration and where a foreign award is set aside at the seat, it becomes unenforceable in Uganda.

Where, however, a foreign award is sought to be enforced in Uganda, *enforcement may be resisted/refused* by the High Court on the basis of any of the grounds set out under Article V of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards including: (i) incapacity, (ii) improper notice and inability to present one's case, (iii) that the award exceeds or does not fully cover the scope of what was referred to arbitration, (iv) improper composition of the arbitral tribunal, (v) that the award is not

yet binding or has been set aside at the seat of arbitration, (vi) that the subject matter of the dispute is not arbitrable in Uganda, or (vii) that the recognition and enforcement of the award would offend Uganda public policy.

It is noteworthy that the grounds under Article V of the New York Convention for the resistance of enforcement of a foreign arbitral award are largely similar to the grounds for setting aside a domestic award in Uganda. Nevertheless, practitioners are advised to take note of the nuances and the pre-existing authoritative interpretations of the Convention.

Enforcement of Partial Awards

Partial Awards, being awards that finally decide one or more of the substantive claims submitted to an arbitral tribunal while leaving other claims pending, are enforceable in Uganda notwithstanding that the tribunal is still seized with the other undecided claims.ⁱⁱⁱ In enforcing such Partial Awards, the procedure to be adopted is the same as that governing the enforcement of final awards.

Importantly, the High Court has stated that foreign awards granting provisional measures or containing injunctive relief are enforceable in Uganda.^{iv}

Judicial and appellate intervention in arbitration matters is greatly limited

Recent rulings by the Court of Appeal^v and High Court^{vi} in proceedings related to the *AYA Investments vs Industrial Development Corporation* and other disputes^{vii} have further clarified and cemented the position that the courts are barred from interfering with arbitration processes or awards except as may be expressly provided for in Uganda's Arbitration and Conciliation Act, Cap. 4.

This means that in general, there is no right of appeal against the decision of the High Court in an application to set aside an arbitral award or to resist the enforcement of one. The only avenue through which appeals may be pursued to the courts is if the arbitration agreement contains an option for an aggrieved party to an award to appeal against it on a question of law to the High Court. Any further appeal to the Court of Appeal requires the express agreement of the parties in addition to leave by the High Court or the Court of Appeal itself. Absent this, all other attempts to appeal against an arbitral award to the courts or to appeal against a High Court ruling on an application to set aside or resist the enforcement of an arbitral award are barred.

These recent decisions by the Court of Appeal and High Court confirm the older position in *Babcon Uganda Limited vs Mbale Resort Hotel Ltd*^{viii} and *Bilimoria and anor vs Bilimoria*^{ix} to the same effect.

Party Autonomy

Increasingly, Ugandan caselaw is buttressing the centrality of party autonomy and the desirability of enforcing arbitration agreements as much as practicable. This policy manifests itself in the form of restrictive analyses of applications to set aside arbitral awards with a strict focus on the process of arbitration and less focus on the substantive decision reached by the arbitrator on the merits of the case.^x The commonly applied adage is that generally *the parties take their arbitrator for better or worse or both as to decisions of fact and law*.^{xi} Thus, practitioners are required to address the limited grounds for setting aside an award or resisting its enforcement and are largely precluded from arguing errors of law or fact which are in the nature of a disguised appeal on the merits.

Arbitrability of specific disputes

The High Court has further stated that non-arbitrable disputes either constitute those disputes whose resolution is reserved by the legislature to exclusive public fora or matters which are excluded by necessary implication by virtue of their public nature. Where, however, a dispute straddles the line between arbitrability and non-arbitrability, the courts and tribunals may in the absence of binding precedent consider the manner in which the claim is framed, the nature of remedies sought, and whether the public or any third parties may be affected by the adjudication, in assessing whether to decide in favour of arbitrability or non-arbitrability.^{xii}

In general, the following matters are considered non-arbitrable in Uganda: employer-employee disputes,^{xiii} criminal offences, child custody and guardianship, insolvency and winding up, constitutional law matters, and others.^{xiv}

Time within which arbitral award must be delivered

In relation to the time within which an arbitral award must be delivered, recent caselaw has clarified that where an arbitration agreement fixes the time within which an award must be delivered, an arbitrator is powerless to extend that period without the mutual agreement of the parties and at the expiry of that set time, the arbitrator's mandate lapses.^{xv} In view of this strict approach, practitioners are cautioned against drafting unreasonably short timelines into arbitration agreements and are advised to retain the

default power of an arbitrator to extend the time within which an arbitral award ought to be delivered.

The default Uganda law position is that an arbitrator must deliver his or her award within two months after entering on the reference or being called on to act by written notice from any party to the submission, or within such period as the arbitrator may enlarge the time for delivering the award provided the enlargement is done before the expiry of the initial period.

Time within which arbitral award must be challenged

Under Uganda law, an application to set aside a domestic arbitral award must be filed within one month of receipt of the award. The courts have construed the reference to “one month” as being a reference to thirty days and have clarified that time starts to run when the award is signed and delivered either to the parties or to the registry of the institution administering the arbitration, and not when the parties actually do collect the award.^{xvi}

In relation to foreign arbitral awards, the action to resist enforcement must be filed within 90 days of receiving notice of the filing of an application for the recognition and enforcement of the award. The application for recognition and enforcement, however, must itself be made within the six-year time limit provided for under Uganda’s Limitation Act, Cap. 80.^{xvii}

Concerning bias

In relation to bias, the Commercial Court has re-affirmed that when approached in connection with a potential appointment, an arbitrator should disclose any circumstances likely to give rise to justifiable doubts as to their independence or impartiality including disclosure of any connection or relationship which the arbitrator has previously had with any of the parties or the subject matter of the dispute which may give rise to an impression of bias. Where doubts are raised as to the impartiality or independence of the arbitrator during the arbitral process, the arbitrator must determine the issue and in the event of a finding of no bias, the question may be reserved by the aggrieved party for determination in a setting aside application following the delivery of the arbitral award.^{xviii}

The Court has also reaffirmed that an arbitral tribunal must not only be free of actual bias, it must avoid even the appearance of bias. Thus, partiality may manifest as actual partiality, an appearance of partiality, or a reasonable impression of partiality.

Importantly, the Court has clarified that the impartiality and independence of an arbitrator is not assessed on the same standard of judicial impartiality and independence since arbitrators are often appointed for their niche expertise and it would be unrealistic to demand that they be free of any and all association with the parties or the subject matter of the dispute. Nevertheless, the arbitrator retains a duty to disclose all circumstances which might lead to an impression of bias in order that the parties may consider any objections they may have and any waivers they may want to make.

The above decisions highlight the continued development of Arbitration Law in Uganda particularly toward a more assertive pro-arbitration stance with limited judicial intervention reserved largely for the correction of fair hearing breaches, public policy considerations, allegations of bias, and questions of non-arbitrability.

We expect to see continuous growth in the uptake of arbitration as a mode of dispute resolution in Uganda as well as the development of additional arbitral institutions with the attendant jurisprudential and economic benefits.

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Please note that this article does not constitute and is not intended to constitute legal advice.

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ⁱ High Court Misc. Cause No. 58 of 2021.

ⁱⁱ High Court Consolidated Arbitration Causes No. 2 and 5 of 2023.

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- ⁱⁱⁱ Great Lakes Energy Company NV vs MSS Xsabo Power Ltd and 4 others, Consolidated Arbitration Causes No. 2 and 5 of 2023.
- ^{iv} Great Lakes Energy Company NV vs MSS Xsabo Power Ltd and 4 others, Consolidated Arbitration Causes No. 2 and 5 of 2023.
- ^v Aya Investments (U) Limited vs Industrial Development Corporation of South Africa Ltd, Court of Appeal Civil Application No. 410 of 2023, and Aya Investments (U) Limited vs Industrial Development Corporation of South Africa Ltd, Court of Appeal Civil Reference No. 20 of 2023.
- ^{vi} AYA Investments (U) Limited vs Industrial Development Corporation of South Africa, HCMA No. 775 of 2023.
- ^{vii} Lakeside Diary Limited vs Midland Emporium Limited and 3 others, Court of Appeal Civil Application No. 858 of 2022.
- ^{viii} Supreme Court Civil Appeal No. 6 of 2016.
- ^{ix} [1962] 1 EA 198.
- ^x Great Lakes Energy Company NV vs MSS Xsabo Power Ltd and 4 others, Consolidated Arbitration Causes No. 2 and 5 of 2023.
- ^{xi} Smile Communications Uganda Limited vs ATC Uganda Limited and Eaton Towers Uganda Limited, Arbitration Cause No. 4 of 2022.
- ^{xii} Smile Communications Uganda Limited vs ATC Uganda Limited and EATON Towers Uganda Limited, Arbitration Cause No. 4 of 2022.
- ^{xiii} Section 9 of the Labour Disputes (Arbitration and Settlement) Act, 2006 excludes the application of the Arbitration and Conciliation Act, Cap. 4 from proceedings of or any award by the Industrial Court of Uganda and Section 93(1) of the Employment Act, 2006 provides that generally, the only remedy available for infringement of employer-employee rights under the Act is to file a complaint with a Labour Officer.
- ^{xiv} Smile Communications Uganda Limited vs ATC Uganda Limited and EATON Towers Uganda Limited, Arbitration Cause No. 4 of 2022.
- ^{xv} Smile Communications Uganda Limited vs ATC Uganda Limited and EATON Towers Uganda Limited, Arbitration Cause No. 4 of 2022.
- ^{xvi} National Housing and Construction Company Limited vs Ambitious Construction Company Limited, Misc. Cause No. 54 of 2023.
- ^{xvii} Great Lakes Energy Company NV vs MSS Xsabo Power Ltd and 4 others, Consolidated Arbitration Causes No. 2 and 5 of 2023.
- ^{xviii} Smile Communications Uganda Limited vs ATC Uganda Limited and EATON Towers Uganda Limited, Arbitration Cause No. 4 of 2022.