

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-CC-00-MA-0579 OF 2005  
(Arising from HCT-CC-00-MC-0002-2005)

B.M. STEEL LIMITED

APPLICANT

VERSUS

KILEMBE MINES LIMITED

RESPONDENT

**BEFORE: THE HON. MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. The applicant, B.M. Steel Ltd, is seeking leave of this court to appeal to the Court of Appeal, against an order of this court dated 14<sup>th</sup> July 2005, setting aside an arbitral award between the parties hereto. The applicant further seeks that costs of this application be provided. The respondent, Kilembe Mines Ltd, opposed this application.
2. At the hearing of the application, I pointed out to the parties that I needed to be satisfied that the applicant had a right of appeal in respect of the order that he wished to appeal against either as of right or with leave of court. Mr. Nangwala, appearing for the respondent blew hot and cold. Initially he took the view that the applicant had a right of appeal, and therefore this application was misconceived. Subsequently he argued that the applicant in fact had no right of appeal, and therefore this application was misconceived.
3. Mr. Kabega appearing for the applicant submitted that the applicant had a right of appeal based on Section 68 of the Civil Procedure Act. And that this application could therefore be presented under Order XL Rule 1 and 2 of the Civil Procedure Rules.
4. I shall first deal with this matter. Section 68 of the Civil Procedure Act, provides,  
“Unless otherwise expressly provided in this Act, an appeal shall lie from the decrees or any part of decrees and from the orders of the High Court to the Supreme Court.”

5. Section 77 deals more specifically with orders of the High Court and appeals therefrom.

It states,

“(1) An appeal shall lie from the following orders, **and save as otherwise expressly provided in this Act or by any law for the time being in force from no other orders**—

(a) an order superseding an arbitration where the award has not been completed with the period allowed by the court;

(b) an order on an award stated in the form of a special case;

(c) an order modifying or correcting an award;

(d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(e) an order filing or refusing to file an award in an arbitration without the intervention of the court;

(f) an order under Section 66 of this Act;

(g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where such arrest or detention is in execution of a decree;

(h) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.  
(Emphasis is mine.)

6. Section 68 of the Civil Procedure Act generally allows appeals from orders of the High Court to the Court of Appeal as it does with decrees of the High Court unless an appeal is barred by any other law. Section 77 in effect bars all appeals against orders save those listed from (a) to (h) in respect of which appeals are allowed as of right. The provisions of Section 77 (1) of the Civil Procedure Act prohibit appeals from any other orders made by the High Court. As can be noted the provisions thereof do allow appeals from certain orders made in arbitration proceedings but do not include an order setting aside an award made in arbitral proceedings.

7. I am fortified in this view by the decision in *B.D. Bilmoria & Another v T. D. Bilmoria* [1962] EA 198 made by the Court of Appeal for East Africa on appeal from Uganda. Gould, J.A., page 202, stated, (and Sir Ronald Sinclair, P., and Sir Alastair Forbes, V-P., agreed),

“ On the other hand, orders made in relation to an arbitration under the Arbitration Ordinance and Rules, unless they fall within the specific categories mentioned in s.77 of the Civil Procedure Ordinance, are not appealable even with leave of a court.”

8. Section 77 (h) of the Civil Procedure Act permits appeals from any order made under rules from which an appeal is expressly allowed by the rules. Order 40 Rule 1 (1) of the Civil Procedure Rules sets out the orders made under the Civil Procedure Rules in respect of which an appeal may lie as of right. Obviously an order setting aside an arbitral award is not one of the orders mentioned. Setting aside arbitral awards is not governed by the

Civil Procedure Act, and its rules but by the Arbitration and Conciliation Act. Therefore no appeal would be contemplated under Order 40 Rule 1 of the Civil Procedure Rules.

9. Order 40 Rule 2 of the Civil Procedure Rules permits with leave of the court appeals against orders of the High Court made under those rules. It states,

“An Appeal under these rules shall not lie from any other order save with leave of the court making the order or of the court to which an appeal would lie if leave were given.”

10. What “under these rules” means received judicial consideration in *Rene Dol v The Official Receiver of Uganda* (1951) 21 EACA 116, a decision of the Court of Appeal for Eastern Africa on appeal from Uganda. Briggs, J.A. stated, and the other judges concurred in this view, that,

“Order XL, rule 1, sub-rule (2), refers only to appeals “appeals under these rules”, which must, I think, mean either “appeals authorized by these rules” or “appeals from orders made under these rules”.

11. This view was cited with approval in *B.D. Bilmoria & Another v T. D. Bilmoria* [1962] EA 198, a decision of the Court of Appeal for East Africa. Gould, J.A. stated and Sir Ronald Sinclair, P., and Sir Alastair Forbes, V-P., agreed.

“When this rule is read together with S.77 (1) (h) of the Ordinance it is clear (and it was so held in *Rene Dol v. The official Receiver of Uganda* (4)) that O. 40, r.2, cannot operate to confer a right of appeal, even with leave, in the case of an order not made under the Civil Procedure Rules.”

12. I am satisfied that an order setting aside an arbitral award is not an order made under the Civil Procedure Rules and would not come within the purview of Order 40 Rules 1(2) and 2 of the Civil Procedure Rules. Appeals contemplated under the said provisions are appeals that arise from orders made under the Civil Procedure Rules, which clearly the order sought to be appealed from in this case is not.

13. In the result I find that this application for leave to appeal against the order of this court setting aside an arbitral award is misconceived. The order cannot be appealed as of right or with leave of the court for the reasons set out above. It is dismissed accordingly with costs.

Dated in Kampala this 31<sup>st</sup> day of August 2005.

FMS Egonda-Ntende

Judge