

APPEAL NO. 11 OF 2022 YU SUNG CONSTRUCTION LTD v. THE ATTORNEY GENERAL OF THE REPUBLIC OF SOUTH SUDAN

Coming up for Hearing: 17th February 2023.

Appeal filed: on 10th October, 2022

Treaty Provision: Article 35A of the Treaty for the Establishment of the East African Community, 1999

Subject matter: Review of decision of the Court

This Appeal is against the decision of the First instance Division where the Appellant in this case filed a Reference No. 21 of 2019 seeking for the review and setting aside by the 1st Instance Division a Consent Judgment recorded and endorsed by the Court on the grounds that the Consent was fraudulently entered without authority of the Applicant/ the Respondent herein.

In the Reference the Applicant claimed that in 2008 they were granted a contract to build a military training complex known as Dr. John Garang Memorial Military Academy and Natinga Warehouses in the Republic of South Sudan. They claim that the Appellant was paid an advance sum of USD 24 million against the contract sum.

Sometimes later the parties disagreed, while the Appellant claimed for outstanding sums of money, the Respondent alleged non-performance of the contract. The disagreement culminated into a Reference in this Court; Reference No. 21 of 2019 which was filed by the Appellant seeking to recover an outstanding sum of USD 46,403,228.26 from the Respondent.

The Respondent failed to file a Response in the Reference. Later on during hearing, a Mr. Biong appeared in Court on behalf of the Respondent and made an oral Application to file a Response out of time and was granted leave to do so. Instead of filing a Response, the parties signed and filed Consent and extracted a decree signed by Mr. Biong which was then recorded and endorsed by the Court.

Later on, the Respondent through a lawyer they instructed, filed an Application under a Certificate of Urgency, Application No. 1 of 2021 in the First Instance Division and submitted that Mr. Biong did not have the mandate to enter into a consent agreement on their behalf and that the Court did not satisfy itself that the agreement was reached lawfully. They further submitted that the agreement was entered into fraudulently without any proper authority and that the Court should review and or set aside the impugned judgment and Decree.

In response, the Appellant amongst other grounds contended that the matter having proceeded on default of the Respondent filing a Response in the main Reference had no *locus standi* in the matter and cannot therefore be heard. They also challenged the manner in which the Advocate for the Respondent came into record.

After hearing of both parties and after considering the rival submissions, the Court delivered their Ruling and granted the orders as prayed for in the Application.

Dissatisfied with the Judgment, the Appellant, Appeals challenging the entire decision of the trial Court.

This is a document produced by the Registry to assist in understanding forthcoming matters before the Court. It does not bind the Court. For authoritative Decisions, Judgments and general information about the Court please visit <https://www.eacj.org>

Contact: Registrar, East African Court of Justice, P.O. Box 1096 Arusha, Tanzania Tel: +255 27 2506093 Fax: +255 27 27 2509493 Email: eacj@eachq.org