REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 695 of 2012

IN THE MATTER OF THE ARBITRATION ACT (1995)

AND

IN THE MATTER OF AN ARBITRATION AWARD

AND

IN THE MATTER OF AN ARBITRATION BETWEEN

KENYA SUGAR RESEARCH FOUNDATION ……..…… APPLICANT (RESPONDENT)

VERSUS

KENCHUAN ARCHITECTS LTD ….....…… RESPONDENT (CLAIMANT)

R U L I N G

1. In this suit before Court, there are two matters that are to be determined contemporaneously. The first is the Applicant's Notice of Motion application dated 5th November 2012 brought under the auspices of **Sections 35(2)(a)(iv), (b)(ii) and (4)** of the *Arbitration Act, 1995* and the *Arbitration Rules, 1997*, **Sections 47(a) and (b)** of the *Public Procurement and Disposal Act (2005)* and **Sections 31(a)(b) and (c)** of the *Public Procurement and Disposal Regulations, 2006*. The Applicant seeks orders for *inter alia* the setting aside and/or stay of the Arbitral Award made and published on 4th September, 2012 pending the hearing and determination of this application. The second matter is the Respondent's Preliminary Objection to the suit dated 21st November, 2012. It is the Respondent's contention that the application is brought under the wrong provisions of the law, in bad faith and a deliberate attempt to delay and frustrate the Respondent from realizing the fruits of the Award.

2. It is logical to deal with the Applicant's application first as it was filed first. The application is predicated upon the Affidavit of George Ombaso Mogaka, the Legal Manager of the Applicant Company. The Affidavit in support reiterated the grounds set out in the application as follows:

"1. The arbitral tribunal award to the claimant of Kshs.12,901,000/= which is 49.97% variation from the original contract price of 25,815,000/= overtly exceeds the lawful maximum limit of variation of 10% as provided in the Public Procurement and Disposal Act 2005 as read together with the Public Procurement and Regulations 2006.

2. The arbitral tribunal found that Claimant spent inordinate time and costs on documentation and witness time, raising the costs of the award. In consideration of the aforementioned, it is illogical that the tribunal directed that the tribunal pays 70% of the costs of arbitration and the claimant pays 30% of the same and secondly each party to pay its costs.

3. The arbitral tribunal directed that the award was due and payable within 30 days and yet the award was made and published on the 4th September 2012 and only served on the 1st October 2012 allowing the Applicant/Respondent only about 3 days to address the award.

4. That the applicant/respondent was deprived off the legally provided for 30 days for correction of computation as well as clarification of ambiguities on the face of the award by being served the award THREE days to the expiry of the said 30 days.

5. That indeed there are computation errors and awards that are out rightly ambiguous or illogical and need clarification".

3. The issue before this Court arose out of a consultancy agreement entered into between the Applicant and the Respondent on 14th March, 2007, annexed to the Supporting Affidavit and marked as exhibit **"GOM 1"** (hereinafter "the agreement")**.** The matters in dispute were referred to Arbitration and the parties agreed to a list of issues for determination that founded the Claim before the arbitral tribunal, as well as the Defence thereto. These were marked as Exhibits **"GMO 3"** and **"GMO 4"** to the Supporting Affidavit respectively, thereby setting the terms of reference for the Tribunal. In seeking the prayers in the application, therefore, it is the Applicant's considered opinion that the Tribunal erred in its finding and did not resolve the dispute in accordance with the agreement and the Laws of Kenya. The Applicant contended that the Award offends public policy, is ambiguous, illogical and therefore unfair and unjust. It is also the Applicant's contention that the computation in the award is erroneous and it would suffer irreparable loss should the Court fail to award the prayers as sought.

4. In opposing the application, the Respondent, in its Replying Affidavit sworn on 21st November, 2012 and deponed by David Situma, maintained that the delay in releasing the Award was the Applicant's own fault, having inordinately delayed in making payment to the Tribunal for its fees, and, as such, has no claim for the delayed publishing of the Award. Further, it is the Respondent's contention that the agreement contained no provision to refer any matters arising out of the Arbitration to the High Court. As such, the Tribunal's Award was final and binding on the parties. In its Preliminary Objection dated 21st November, 2012, the Respondent in objecting to the application, reiterated the contents of the Replying Affidavit and further contended that the Arbitral Tribunal acted within its powers in making the Award dated 4th September, 2012. It continued by saying that the Applicant, through its application, is attempting to obtain from the High Court what it could not obtain from the Arbitral Tribunal. Further, the Respondent contended that this Court lacks jurisdiction to hear and determine or intervene in the matters raised.

5. Having carefully considered the Application, the Preliminary Objection and Affidavits by both parties, pleadings and depositions made in Court on 30th January, 2012, it is the Court's observation that the issue for determination is whether the Court, in exercise of its discretionary powers, or inherent powers otherwise conferred upon it by Law, can intervene and set aside the Award delivered on 4th September, 2012. In determining the role of an Arbitrator, **Mustill & Boyd's Commercial Arbitration 2nd Edition at page 641** and **Halsburys Laws of England Vol. 11 4th Edition Paragraph 622**,offer some critical analysis and guidance as the learned authors state that:

"***An Arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Act which embodies the principles derived from a specialized branch of law of agency.*** (emphasis added). ***He commits misconduct if by his award he decides matters excluded by the agreement. A deliberate departure from the Contract amounts not only a manifest disregard to his authority or misconduct on his part but may be tantamount to a malafide action."***

In **Associated Engineering Co v Government of Andhra Pradesh (1991) 4 SCC 93 (AIR 1992 Sc. 232),** the Supreme Court of India held that:

"1. The Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to Arbitrate in terms of the contract. He has no power apart from what the parties had given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it.

2. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency. He commits misconduct if by his award he decides matters excluded by the agreement. A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part but it may be tantamount to a *mala fide* action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiated the award."

It is therefore essential to look at the agreement in order to determine the scope and terms of reference of the Tribunal. The Arbitral Tribunal should confine itself to the terms of the agreement when determining issues that are before it, as per **section 29 (5)** of the *Arbitration Act*. The terms of the agreement were, however contested by the Applicant, and were therefore subject to determination before the Arbitral Tribunal. It is the Applicant's contention that the Award was based on an illegality and was thus contrary to public policy.

6. The Tribunal was appointed jointly by the parties. The issues for determination as detailed in the Statement of Claim and the Response thereto, together with the List of Agreed Issues, set out the parameters and scope within which the Tribunal was to act. The issue that the Applicant raises was that the Tribunal made an award that was beyond the 10% variation on fees as set out under the provisions of the Public Procurement and Disposal Act, and particularized under **Section 47(b)**. In the Amended Statement of Claim dated 17th December, 2010 at paragraphs 19 and 20, the Claimant states;

"19. The Claimant and Respondent engaged in discussions and negotiations regarding the Claimant's request for variation of the professional/consultancy fees with a view to modifying the contract but the Respondent turned down such a request."

At paragraph 20, the Amended Statement of Claim further details:

"20. Notwithstanding that the professional fees had not been agreed, the Claimant continued supervising and rendering its professional services while negotiations were underway."

6. In the Amended Response to the Amended Statement of Claim, the Respondent stated at paragraph 15 thus:

"15) The Respondent admits paragraphs 19, 20 and 21 of the Amended Statement of Claim only in so far as the same relates to discussions regarding the Claimant's verbal request for variation of their professional/consultancy fees but the Respondent states that it only re-stated its earlier position that the variation they were seeking could not be sustained under the terms of the contract and the Public Procurement and Disposal Act and the Regulations thereunder."

In ruling as to the dispute arising and in exercise of its authority derived from Clause 37.7 of the Construction Contract, the Tribunal in its Final Award at Clause 9(F) at page 13, made its determination in part, in favour of the Claimant in the following manner:

"The Arbitral Tribunal finds and holds that the agreed fees could vary by more than 10% whilst also clarifying that the fees should be based on the agreed Kshs. 200 million plus fees on the new

elements of the TOR."

7. The 'new elements' as described by the Tribunal at page 13 of its Award, are discussed extensively in the same. The construction cost was initially estimated at Kshs. 200 million. This cost, however, rose significantly to over Kshs. 580 million and the final tender was awarded at Kshs. 634,562,520/-. The initial lump sum payment for the Respondent's costs that was to be made was Kshs. 20 million, being 10% of the construction cost. The parties had agreed the Respondent's fees based on the budgeted cost of construction at Kshs. 200 million. They signed the agreement on 14th March, 2007 for the lump sum of Kshs. 25,855,800/-. However, the parties made variations to the original Request for Proposal (RFP) to include new items not initially listed. Given that the costs for construction had increased significantly, the Claimant in October, 2007 was of the opinion that its fees vis-a-vis the new construction costs, would also need to be amended upwards, to be commensurate with the new Terms of Reference (TOR). This variation was put before the arbitral tribunal.

8. Did the arbitral tribunal, therefore, as reiterated in the case of **Associated Engineering Co v Government of Andhra Pradesh** (supra) act arbitrarily, capriciously or independent of the Contract? Under Clause 6.1 of the agreement, the contract price was subject to increase as it subsequently was from an initial estimate of Kshs. 200 million to slightly over Kshs. 634 million. At Clause 6.3 titled **"Payment for Additional Services"**, remuneration for additional services, as was carried out by the Applicant in this instance, would be calculated at 10% of the additional works. The Clause reads;

"For the purpose of determining the remuneration due for additional service as may be agreed under Clause 2.4, the remuneration for additional work will be calculated as 10% of the *Construction cost of the additional works*."

In its final Award, the arbitral tribunal decided this point in favour of the Claimant and awarded it Kshs. 12,901,000/- being 10% calculated from additional costs of the Construction as evaluated by the arbitral tribunal at Kshs. 77 million. This amount was broken down at page 22 of the Final Award at the Summary. The Kshs.12,901,000/- was therefore, not over and above the fees of Kshs. 25,815,000/- that were initially agreed upon as a lump-sum payment, but for the additional work arising from the additional costs of the construction.

9. I have considered the submissions of both the Applicant and the Respondent herein. I have also perused the authorities cited to this court by both sides. Try as I may, I found no assistance from the Applicant's following authorities namely: **Republic versus Attorney General & another ex-parte Kenya Airline Pilots Association (2003)eKLR, Minister of Agriculture versus Matthews (1949 A. No. 780), Regina versus Medical Appeal Tribunal ex-parte Gilmore (1957) 1QB 575 and Vestry of the Parish of St Mary Islington versus Hornsey Urban District Council (1900) 1CH 705**. All these authorities involved quasi-tribunals set up under various statutes both in Kenya and in England and the powers in relation to the superior Court in its supervisory jurisdiction over the same. I saw no relevance in that regard to the present matter before court and which under **section 10** of the *Arbitration Act*, this Court has no power to intervene in matters of governed by the Act, which would apply to proceedings before an arbitral tribunal. However, the authority of **Hinga versus Gathara (2009) KLR 698** as cited to this Court by the Respondent established firmly that a party cannot ground an application to set aside an award of an arbitral tribunal outside the provisions of **section 35** of the *Arbitration Act*. The Court of Appeal therein stated quite clearly that this court does not have jurisdiction to intervene in any matter not specifically provided for in the Arbitration Act which included applications purporting to stay the award for the judgement/decree arising from the award. The Court stated:

"The provisions of the Arbitration Act make it clear that it is a complete code except as regards the enforcement of the award/decree where Arbitration Rules 1997 apply the Civil Procedure Rules where appropriate…….. It follows therefore all the provisions invoked except Section 35 and 37 do not apply or give jurisdiction to the superior court to intervene and all applications filed against the award in the superior court should have been struck out by the court *suo moto* because jurisdiction is everything as so eloquently put in the case of the *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd 1989 KLR 1"*.

10. In setting aside an Arbitral award, the Court is empowered under **Section 35** of the *Arbitration Act* on such grounds as set out therein. The Applicant relied on **Section 35 (2)(iv) and (b)(ii)** which provides for the setting aside of an arbitral award that was not contemplated by or not falling within the terms of reference to the arbitration and made against public policy. In following through the deductions as detailed above, the Applicant has failed to satisfy this Court on the grounds that the Award was made outside the scope of reference of the tribunal. In this finding, the court is supported by the **Kenya Shell Ltd v Kobil Petroleum Ltd (2006) 2 KLR 251** case, relied upon by the Applicant, where the Court of Appeal concluded thus:

"The only ground taken up by the applicant to challenge the award was under section 35 (2) (a) (iv) of the Act. The plain reading of that provision and the issues submitted to the tribunal for adjudication does not reveal that the tribunal went outside its jurisdiction. The argument intended to be advanced that clause 18 was not considered at all or was considered outside the context of the agreement between the parties is, in our view, fanciful. It was in fact considered and if it is the contention that the tribunal completely misconstrued the clause in law, then we say with the superior court that there was no challenge made in that respect before it and it does not arise before this Court. At all events the tribunal was bound to make a decision that did not necessarily sit well with either of the parties. It would nevertheless be a final decision under section 10 of the Act unless either party can satisfy that Court that it ought to be lawfully set aside. In this case the decision was final. We do not feel compelled therefore to extend the agony of this litigation on account of the issues raised by the applicant. As stated earlier, we decline to exercise our discretion in favour of the applicant and we dismiss the application with costs".

11. The second ground upon which the Applicant relies is that the Award offended public policy. **Blacks' Law Dictionary, 7th edition** defines public policy as:

"…principles and standards regarded by the Legislature or by the Courts as being of fundamental concern to the State and the whole of the society."

Under **Section 35(2)(b)(ii)** of the *Arbitration Act*, the Court may set aside an arbitral award if it finds that the Award was made contrary to public policy. In the case of **Christ for All Nations v. Apollo Insurance Company Ltd Civil Case 499 of 1999 (unreported)**, Ringera, J (as he then was) after quoting **Section 35 (2) (b) (ii)** went on to state as follows:

"As far as I know the above provision has not received judicial interpretation in our courts."

Ringera J was persuaded to follow the decision in the case of **Renusaghar Power Co. v. General Electric Co. AIR (1994) SC 860: (1994) CLA sup 1 SC** where the Indian Supreme Court identified 3 principles as to the operation of the doctrine of public policy, in the field of enforcement and recognition of foreign arbitral awards, as follows;

"a. That an award will not be given effect if it is contrary to

the fundamental policy of the Indian Law i.e. if the

award involves a violation of the Indian Laws or non-

compliance with a court's order;

b. If the enforcement of the award would be contrary to the interests of India and

c. If the award would be contrary to justice and morality."

In adopting these principles as guidance for his Ruling the learned Judge then says:

"I am persuaded by the logic of the Supreme Court of India and I take the view that although

public policy is a most broad concept incapable of precise definition or that as the common law judges used to say, it is an unruly horse. An award could be set aside under Section 35 (2) (b) of the Arbitration Act as being inconsistent with public policy of Kenya if it was shown that it was either

1. **Inconsistent with the constitution or other laws of Kenya whether written or unwritten;**

2. **Inimical to the national interests of Kenya,**

3. **Contrary to Justice or morality."**

So does the Applicant's claim fall in the purview of what is elaborated above? In the case of **Profilati Italia SrL vs. PaineWebber Inc (2001) 1 All ER (Comm) 1965, (2001) 1 Lloyd's Rep 715,** Moore-Bick J stated that where a party alleges that the way in which an award was procured was contrary to public policy, it will normally be necessary to satisfy the court that some form of reprehensible or unconscionable conduct on the part of the successful party has contributed in a substantial way to the award being made. The court should not be quick to interfere.

12. Further and as to the second ground that the award was contrary to public policy, the Applicant refers to paragraph F of the Final Award. It claims that the award was above 10% of what is stipulated under the agreement which is covered under the provisions of the **Public Procurement and Disposal Act** and that the award was made with undue disregard of the provisions of the law. I have read the contents of paragraph F of the Final Award of the arbitral tribunal. The matter of whether the increase in consultancy fees breached the provisions of the **Public Procurement and Disposal Act** was considered by the arbitral tribunal which found as follows:

The Consultancy Contract was subject to the laws of this country and the Respondent was aware and cognizant of the Public Procurement Act (PPOA). The onus of complying with the provision of that Act lay upon the Respondent and he cannot now say it behooved the Claimant to refuse to carry out the extra works because its fees would vary by more than 10%. It was the responsibility of the Respondent to satisfy itself that it was not breaking the law when commissioning the Claimant for the Claimant did not know the internal workings of the Respondent and should not be penalized for those shortcomings of the Respondent.

At no time did the Respondent raise the question of PPOA and at no time did it write to PPOA to seek guidance or inform the Claimant that it would not pay any fees exceeding 10% of the original fees. The Arbitral Tribunal is persuaded by the Claimant's argument that the Respondent was using the law as an excuse to evade payment!.

That notwithstanding, the Director General, PPOA has issued a circular clarifying that fees quoted by the professionals should be in accordance with the scales laid by the relevant laws of the profession or the inter parties contracts!. In this instant case, the parties had an agreement stipulating what the fees was, and what the fees would be in the case of increased TOR. The parties cannot now change the law midstream and start to calculate the due fees in accordance with Cap 525 of the Laws of Kenya.

The Arbitral Tribunal finds and holds that the agreed fees could vary by more than 10% whilst also clarifying that the fees should be based on the agreed Kshs.200 million plus fees on the new elements of the TOR.

The construction contract between the Respondent and the third party Dinesh Construction, was valued at Kshs.634,562,520, and the supervision fees for the Consultant was not based on that figure, and the figure should not replace the estimated Kshs. 200 million in the supervision portion of the Contract".

Although, counsel for the Applicant extensively referred me to **section 47 (b)** of the *Public Procurement & Disposal Act (2005)* during his submissions before court, I am satisfied that this matter was properly

canvassed before the arbitral tribunal and I am further satisfied that the arbitral tribunal came to the correct conclusion with regard to its interpretation of the said statute. I concur with the arbitral tribunal's finding of law that there was nothing under the provisions of the said Act to stop the finding that the agreed fees could be varied by more than 10%.

13. Further as regards the increase in the consultancy fees, it was the Applicant's contention that the 10% should have been based on the agreed consultancy fees of Kshs. 25 million, bringing the increased amount to Kshs. 2.5 million. The Applicant relied again upon the Court of Appeal's decision in **Kenya Shell Ltd v Kobil Petroleum Ltd** (supra)in which the Court of Appeal, in dismissing an application for leave to appeal, stated that one of the issues that it may consider for granting such leave, were issues with regard to public policy, even if the Court was satisfied that the appeal had no prospects for success. However, its discretion would not be fettered and would be exercised judicially and fairly, with the interests of justice considered. At page 260, in following and observing the ruling of Ringera, J in **Christ for All Nations v Apollo Insurance Co. Ltd** (supra), the Court held;

"…but in our view, public policy considerations may ensue in favour of granting leave to appeal as they would to discourage it. We think, as a matter of public policy, it is in the public interest that there should be an end to litigation and the Arbitration Act under which the proceedings in this matter were conducted underscores that policy. Do we think there is a realistic prospect of success of the intended appeal or, put another way, is there a ground for appeal that merits serious judicial consideration? We think not."

14. To my mind, the Applicant has not made out a case under the provisions of **Section 35(2)(b)(ii)** of the Arbitration Act to have the Award set aside for going against public policy. As reiterated by **Ringera, J** as above, the Applicant has to show that the Award was made contrary to justice and morality, inimical to the national interest of Kenya and inconsistent with the Constitution or other laws, whether written or unwritten. To this Court's mind, the Applicant has failed to satisfy all three of these principles in its present application. Further, the Court, having considered the agreement and the terms set out therein as to the percentages on consultancy fees to be paid, it is clear that the Applicant was entitled to pay the Respondent 10% over and above the estimated costs of Kshs. 200 million. The amount of Kshs. 12, 901,000/- arrived at by the Tribunal did not emanate from the Kshs. 25 million that was to be paid initially, but from the Kshs. 77 million after the change in the TOR. I find therefore that the arbitral tribunal did not go against public policy, as alleged by the Applicant.

15. Further, for the Applicant to succeed in its application, it must place its complaints within the purview of **Section 35 (2)** of the Arbitration Act. Kimaru, J in making his determination in **Century Oil Trading Co. Ltd v Kenya Shell Ltd Misc. Civil Application No. 1561 of 2007**, relied upon by the Respondent, held *inter alia*:

"…this court takes cognizance of the fact that, in determining this application, it is not sitting on appeal against the decision of the arbitrator. This is in view of the fact that the parties herein agreed by consent that the decision of the arbitrator would be final. In the present application, it is evident that the applicant seeks to set aside the arbitrator's award pursuant to the provisions of Section 35(2)(a)(iv) an 35(2)(b)(ii) of the Arbitration Act. The Arbitration Act prohibits this court from entertaining any matter arising out arbitration proceedings other than in the manner contemplated by Section 35(2) of the Arbitration Act."

Put another way, the Courts will not interfere with an arbitral award if the application does not comply with the ground for setting aside as set out under **Section 35(2)(a)(iv) and 35(2)(b)(ii)**. This point was amply covered and reiterated in the other cases relied upon by the Respondent being **Mumias Sugar Company Ltd versus Mumias Outgrows Company (1998) Ltd (2012)eKLR, Kamconsult Ltd versus Telcom Kenya Ltd & Anor. (2001)KLR 684, Erad Suppliers& General Contractors look Ltd versus National Cereals and Produce Board Misc.Appl. No. 639 of 2009 (unreported), Kenya Airports Authority versus Nairobi Flying Services Ltd Misc. Appl. No. 914 of 2011 (unreported), Superior Enterprises Ltd versus The Union Insurance Co.Ltd Nairobi HCCC No. 5239 of 1990 (unreported) and Odero versus National Bank of Kenya Ltd Misc. Civil Appl No. 491 of 2011 (unreported)**.

16. In the case of **MORAN v LLOYDS (1983) 2 ALL ER 200** it was reiterated that the courts cannot interfere with findings of facts by an arbitrator. The court's intervention is limited to errors of law. The Court's intervention is limited to such errors of law which are apparent on the face of the Award. It is only when an erroneous proposition of law is stated in the Award that a court can set aside the award or remit it to the arbitral tribunal for re-consideration on the grounds of such error of law apparent on the face of the record. The Court will not interfere with the Award unless some real injustice or substantial diversion from the law can be proved. In this regard, it is obvious that this Court cannot interfere with any of the 5 grounds in support of the Applicant's Notice of Motion dated 1 of November 2012. Those grounds all referred to decisions of the arbitral tribunal, including the award relating to costs both of the arbitral tribunal and the parties themselves. In my view, the Applicant can count itself lucky that the arbitral tribunal awarded that each party should bear its own costs for if the dispute had been before this court, costs would very likely have followed the event. However, the Applicant may have had a point as regards the amount awarded under the Award which was directed by the arbitral tribunal to be payable within 30 days of the date thereof failing which any unpaid amount would attract compound interest at commercial rates. However, I have taken into account the statement made by Mr. Situma in the Replying Affidavit dated 21 November 2012 that the Applicant had delayed in making payment of its share of the fees of the arbitral tribunal. This fact, which was not denied by the Applicant, only reflects upon it and it only has itself to blame for any delay in that regard.

17. To this end, I note that the Applicant is a body corporate and duly established under statute. In this regard, I endorse the finding of my learned brother **Odunga J** as quoted in the **Erad Suppliers** case as above:

"It is not law that in every suit where a decision has been made against a body set up under a statute and funded by the Treasury that courts should, as a matter of course, grant stay. Statutory bodies are, ordinarily, legal persons with capacity to sue and be sued. They enter into contracts just like any person and accordingly must be liable for their actions… I am not, therefore, expected to base my decision merely on the ground that one party is funded by public resources…."

The upshot of the above reasons is that, the Applicant's application dated 5th November, 2012 lacks merit and is hereby dismissed. The Respondent's Preliminary Objection dated 21 November 2012 is allowed. The Applicant will pay the costs of its said application to the Respondent.

DATED and delivered at Nairobi this 23rd day of April, 2013.

J. B. HAVELOCK
JUDGE