

THE REPUBLIC OF UGANDA

IN THE MATTER OF ADJUDICATION

BETWEEN

SBI INTERNATIONAL HOLDINGS AG CLAIMANT

AND

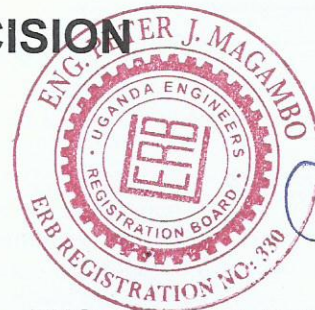
UGANDA NATIONAL ROADS AUTHORITYRESPONDENT

**DESIGN AND BUILD CONTRACT FOR STRENGTHENING / REHABILITATION OF
MALABA / BUSIA – BUGIRI ROAD**

CONTRACT PROCUMENT REFERENCE NO: GOU / HW/ COO4

ADJUDICATOR'S DECISION

ADJUDICATOR:



ENG. PETER J. MAGAMBO
B.Sc. Eng. FUIPE, R. ENG, ACI Arb

DECEMBER 2019

RECITAL

Facts of the Contract between the Claimant and the Respondent are recited below.

Contractor (CLAIMANT)	:	SBI International Holdings AG Plot 88, Luthuli Avenue P.O. Box 11713, Kampala														
Employer (RESPONDENT)	:	Uganda National Roads Authority (UNRA) Plot 3-5, New Portbell Road, Nakawa P.O. Box 28487 Kampala, Uganda														
Employer's Representative	:	SNC Lavalin International Inc., 2275, Upper Middle Road (East) Oakville, Canada L6H0C3														
Contract	:	Design and Build Contract for Strengthening/Rehabilitation of Malaba/Busia-Bugiri Road.														
Contract No.	:	GOU/HW/C004														
Site Location	:	Malaba/Busia-Bugiri Road														
Contract Sum	:	UGX 116,846,475,250/= (One Hundred Sixteen Billion Eight Hundred Forty Six Million Four Hundred Seventy Five Thousand Two Hundred Fifty Uganda Shillings only) VAT Exclusive.														
Date of Agreement	:	17 December 2010														
Contract Start Date	:	01 February 2011														
Intended Completion Date	:	24 months after commencement (i.e. 31 January 2013)														
Defects Liability Period	:	12 months														
Type of Contract	:	EPC/Turnkey Projects FIDIC, First Edition 1999														
Documents forming part of the Contract	:	<table border="1"> <tr> <td>SECTION 1</td> <td>Form of Agreement Power of Attorney Solicitor General's Clearance of the Contract UNRA Contracts Committee Approval</td> </tr> <tr> <td>SECTION 2</td> <td>Letter of Acceptance Performance Guarantee Form Advance Guarantee Form Breakdown of Contract Price</td> </tr> <tr> <td>SECTION 3</td> <td>Negotiation Minutes Appendix to Bid Tender Clarifications</td> </tr> <tr> <td>SECTION 4</td> <td>Particular Conditions of Contract</td> </tr> <tr> <td>SECTION 5</td> <td>General Conditions of Contract</td> </tr> <tr> <td>SECTION 6</td> <td>Employer's Requirements</td> </tr> <tr> <td>SECTION 7</td> <td>Extracts from the Contractor's Technical Bid <ul style="list-style-type: none"> • Technical Proposal Contents </td> </tr> </table>	SECTION 1	Form of Agreement Power of Attorney Solicitor General's Clearance of the Contract UNRA Contracts Committee Approval	SECTION 2	Letter of Acceptance Performance Guarantee Form Advance Guarantee Form Breakdown of Contract Price	SECTION 3	Negotiation Minutes Appendix to Bid Tender Clarifications	SECTION 4	Particular Conditions of Contract	SECTION 5	General Conditions of Contract	SECTION 6	Employer's Requirements	SECTION 7	Extracts from the Contractor's Technical Bid <ul style="list-style-type: none"> • Technical Proposal Contents
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		<ul style="list-style-type: none"> • Contractor's Key Staff • Preliminary Work Program • Schedule of Plant and Equipment Extracts from the Contractor's Financial Bid												
Scope of Works	:-	<p>The Design-Builder to carry out and be responsible for the design and construction of Malaba-Busia-Bugiri Road.</p> <p>The Contractor to execute the assignment in three phase as follows:</p> <ul style="list-style-type: none"> • Phase 1 – Malaba-Namutere Road Section (39.1km) • Phase 2 – Namutere-Bugiri Road Section (26.5km) • Phase 3 – Busia-Namutere Road Section (16.9km) 												
Additional Works	:	<ul style="list-style-type: none"> • 1.2 Km additional lane to accommodate traffic parking at URA check point • Access Road to Majasi High School • Access Road to Tororo Girls School • Malaba Town Road and Ring Road 												
Completion of Works	:	<table border="1"> <thead> <tr> <th></th> <th>Substantial Completion</th> <th>Certificate of Completion</th> </tr> </thead> <tbody> <tr> <td>Busia-Namutere Road Section</td> <td>14 December 2012</td> <td>02 December 2014</td> </tr> <tr> <td>Namutere – Bugiri Road Section</td> <td>20 June 2013</td> <td>02 December 2014</td> </tr> <tr> <td>Malaba-Namutere Road Section</td> <td>31 December 2013</td> <td>11 November 2015</td> </tr> </tbody> </table>		Substantial Completion	Certificate of Completion	Busia-Namutere Road Section	14 December 2012	02 December 2014	Namutere – Bugiri Road Section	20 June 2013	02 December 2014	Malaba-Namutere Road Section	31 December 2013	11 November 2015
	Substantial Completion	Certificate of Completion												
Busia-Namutere Road Section	14 December 2012	02 December 2014												
Namutere – Bugiri Road Section	20 June 2013	02 December 2014												
Malaba-Namutere Road Section	31 December 2013	11 November 2015												

1. Dispute Resolution

- 1.1 Clause 20.4 of the General Conditions of Contract of the above cited Contract provides for dispute resolution stating that *"If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer, then after a DAB has been appointed pursuant to Sub-Clauses 20.2 (Appointment of the Dispute Adjudication Board) and 20.3 (Failure to Agree Dispute Adjudication Board), either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other party.*

2. Appointment of Adjudicator

- 2.1 Clause 20.2 of the Conditions of Contract provides that the Adjudicator is to be jointly appointed by the parties.

2.2 The Adjudicator in the subject dispute was appointed by the consent of the Claimant and Respondent vide the following letters.

- Claimant's letter Ref. SBI/HO/510/UNRA/01 dated 7 March 2017 to the Adjudicator nominating him as member to the Dispute Adjudication Board.
- Adjudicator's letter Ref. K&P/SBI/UNRA/2017/001 dated 9 March 2017 to the Claimant of acceptance for the nomination as a member on the panel to the Dispute Adjudication Board subject to the Respondent's no objection.
- Claimant's letter Ref. SBI/HO/MBB/0317/435 dated 10 March 2017 to the Respondent forwarding the Adjudicator's letter of acceptance for the nomination.
- Respondent's Letter Ref. UNRA/DRM/GN/16 dated 11 August 2017 to the Claimant's Counsel accepting the Claimant's nomination of the Adjudicator subject to his appointment by the President of the Uganda Institution of Professional Engineers.
- Respondent's letter Ref. UNRA/DLS/19 dated 18 September 2019 to the Claimant's Counsel of no objection to the sole DAB member.
- Claimant Counsel's letter Ref. VJ/SBI-UNRA/1255/16 dated 11 October 2019 to the Adjudicator of notification of appointment of the Adjudicator and request of confirmation.
- Adjudicator's letter Ref. SBI-UNRA/ADJ/002 dated 14 October 2019 addressed to the Claimant and the Respondent of confirmation of acceptance of appointment Adjudicator.

Copies of the letters are included in Appendix A.

2.3 The Adjudicator, Eng. Peter Magambo was therefore duly appointed to adjudicate in the matter of dispute between the Claimant and the Respondent.

3. Adjudication Process

3.1 The adjudication process involved the following procedure:

3.1.1 The Claimant's Counsel requested for a preliminary meeting of the parties with the Adjudicator to discuss the matters of procedure vide letter Ref. VJ/SBI-UNRA/1255/16 dated 11 October 2019.

3.1.2 The Adjudicator scheduled the preliminary meeting with the parties vide letter Ref. SBI-UNRA/ADJ/002 dated 14 October 2019 on 17 October 2019.

3.1.3 The Preliminary meeting between the Adjudicator and the two parties (the Claimant and the Respondents) was held on 17 October 2019 at 3.00pm at the Uganda Institution of Professional Engineers (UIPE) offices at UNRA Public Works Training Centre, Kyambogo with the following agreed agenda:

- i. Introductions of the parties to the Adjudicator;

- ii. Confirmation of the official representative of each party in the adjudication process and their respective address;
- iii. Mention of case for Adjudication;
- iv. Matters of procedure in the adjudication process;
- v. Contract Documents and;
- vi. Administrative issues.

The Record of the discussions at the Preliminary Meeting was taken and a copy was distributed to all parties. A copy of the record of discussions at the Preliminary Meeting is included in Appendix B.

3.1.4 The official representatives for each party were confirmed at the Preliminary meeting as stated below:

- **For the Claimant :**

Mr. Sharly Buchbut
SBI International Holdings AG
Plot 88, Luthuli Avenue
P.O. Box 11713 Kampala – Uganda
Email: sharly@sbi.co.ug
Raymond@vjassociates.net

- **For the Respondent :**

Mr. Henry Muhangi
Directorate of Legal Services
Uganda National Roads Authority
Plot 3-5, Old Portbell Road
UAP Business Park, Nakawa, Level 3; Block C
Email: henry.muhangi@unra.go.ug
Isabella.Tainamigisha@unra.go.ug

3.1.5 The Adjudicator requested and it was agreed by both parties that the Claimant provides him with a copy of the full set of the contract documents of the Contract between Uganda National Roads Authority and SBI International Holdings AG including General conditions of Contract, Special Conditions of Contract, Technical Specifications, Drawings and Bills of Quantities on 24 October 2019.

The Claimant submitted the Contract Agreement document dated December 2010 on 18 October 2019. The Adjudicator perused the Contract Agreement document to comprehend the provisions and the terms of the Contract.

- 3.1.6 The agreed procedure in the adjudication process involved the following:
- 3.1.6.1 The Claimant and the Respondent were asked and agreed to present their Statement of Case and Defence in a format that addresses the following aspects of their cases.
- a) Factual Background
 - b) Contractual basis
 - c) Procedural requirements and Compliance
 - d) Justification of Claim with necessary evidence
 - e) Entitlement
 - f) Annexure
- 3.1.6.2 Submission of the Statement of Case by the Claimant was due on 28 October 2019. However, the Claimant vide letter VJ/SBI-UNRA/1255/16 dated 25 October 2019 requested for an extension of 4 days to file its Statement of Case that is on 1 November 2019 due to failure to retrieve exhibits from the Contractor's Offices as the Project had been closed off in May 2015 (Copy of the letter is attached in Appendix C). The Adjudicator granted the Claimant his request thus the Claimant submitted its Statement of Case to the Adjudicator on 1 November 2019.
- 3.1.6.3 The Respondent's Statement of Defence was required to be submitted by 11 November 2019; the submission was extended by 4 days until 15 November 2019 vide Adjudicator's letter Ref. SBI-UNRA/ADJ/005 dated 28 October 2019 due to the extended submission date of the Claimant's Statement of Case. (Copy of the letter is attached in Appendix D). The Respondent submitted its Statement of Defence to the Adjudicator on 15 November 2019.
- 3.1.6.4 The Claimant submitted its rejoinder to the Respondent's Statement of Defence to the Adjudicator on 22 November 2019.
- 3.1.6.5 The hearing that was initially scheduled for 26 November 2019 was postponed to 29 November 2019 due a clash in schedule of the Adjudicator's engagements. The scheduled hearing of 29 November 2019 was attended by only the Claimant owing to an internal communication mishap on the Respondent's side. The Adjudicator vide letter Ref: SBI-UNRA/ADJ/007 dated 29 November 2019 communicated the rescheduled date of hearing of 03 December 2019 which was agreed upon by both parties through the telephone communication on 29 November 2019. Copies of the correspondences are included in Appendix E herewith.
- 3.1.6.6 The hearing was held on 03 December 2019 at Kagga & Partner's Boardroom at Kagga House Bugolobi at 2:00pm.

1) The following persons participated in the hearing.

Party	Name	Position	
Contractor / Claimant: SBI International Holdings AG P.O Box 11713 Kampala, Uganda	Sharly Buchbut Scobodan Blasbojevic	Chief Engineer Technical Manager	
	Raymond Ndyagambaki Deepa Verma	Advocate Advocate	Verma Jivram & Associates
Employer / Respondent: Uganda National Roads Authority P.O Box 28487 Kampala, Uganda	Henry Muhangi	Senior Legal Officer	
	Isabella Taimanigisha	Legal Officer	
	Khalil Odong	Project Engineer	
Adjudicator	Eng. Peter J. Magambo	Adjudicator	
	Tutu Ismael Kagga	Adjudicator's Secretary	

2) The hearing was conducted in a format agreed by the parties below:

- i. Presentation of the Claimant's Statement of Case;
- ii. Presentation of Respondent's Statement of Defence;
- iii. Questions by the Adjudicator to the two parties. The Adjudicator presented written questions to each party and verbal responses were made at the hearing.
- iv. Questions by the parties. Each party was given opportunity to ask the other party questions pertaining to matters of the dispute.

The recording of the proceedings at the hearing on 03 December 2019 are included in Appendix F herewith.

3) The questions by the Adjudicator to the two parties are appended to the proceedings of the hearing in Appendix F.

3.1.6.7 The Claimant was asked to submit a copy of the SBI letter Ref. SBI/510/SNC/12 13/283 dated 15 November 2013 mentioned in the Engineer's Determination contained in Exhibit C-19 by 6 December 2019. The letter was submitted on 5 December 2019 by the Claimant's Counsel and is included Appendix G.

3.1.6.8 The Adjudicator's decision that was initially agreed at the preliminary meeting to be submitted on 17 December 2019 was postponed to 20 December 2019 as per the way forward in the records of proceedings of the hearing in Appendix F.

4 Claims

4.1 Claimant's Claims

The Claimant seeks the following relief in the case against the Respondent drawn and filed by the Claimant's Counsel M/s Verma Jivram & Associates dated 31 October 2019:

1. Payment for amount as determined: A declaration that SBI is entitled to payment of UGX 2,827,058,720 as determined by the Employers' Representative who had full authority to determine the claim in accordance with Sub-clause 3.1 and 3.5.
2. Financing charges and/or interest: A declaration that SBI is entitled to payment (to be quantified in due course) of financing charges and/or interest at the rate of 8% for payments in local currency and for other currencies at the rate of LIBOR plus 2% in accordance with Sub-clause 14.8 may determine compounded monthly in relation to the above.
3. Costs: A declaration that SBI is entitled to payment of its costs incurred in relation to this Adjudication calculated on an indemnity basis.

SBI reserves the right to amend or supplement its claims and requests for relief as appropriate during the course of the Adjudication.

4.2 Respondent's Entitlements

The Respondent in its Statement of Defence seeks the following:

1. A declaration that the Contractor is not entitled to any payment for lack of contractual basis.
2. Costs of the Adjudication.

5 Adjudicator's Decision

The Adjudicator having considered the Claimant's Statement of Case; the Respondents Statement of Defence and the submissions at the hearing session, the Adjudicator's decision pursuant to Sub-clause 20.4 of the Conditions of Contract is as follows:

5.1 The Claimant is entitled to, as determined by the Adjudicator:

- 1) Additional payment of UGX 1,150,880,849.
- 2) Financing charges and/or interest at the rate of 8% for payments in local currency in accordance with Sub-clause 14.8 of amount UGX 449,659,937.

5.2 Each party is to bear its costs of the claim and adjudication.



6 Rationale

6.1 Factual Background

6.1.1 Correspondences in regards to the additional works commenced in April 2013 vide letter Ref. MBBP/UG/ER/2013/366 dated 12th April 2013 submitted in Exhibit C7 of the Claimant's Statement of Case.

6.1.2 Approval and instruction to carry out additional works occurred in two stages, viz,

Additional Works	Letter Ref.	Date	Claimant Exhibit
1. Construction of 1.2km additional lane to accommodate traffic parking at the URA check point on LHS from Malaba border.	MBBP/UG/ER/2013/426	6 December 2013	C9
2. Construction of access road to Majansi High School at Km 7+800.	MBBP/UG/ER/2013/431	7 January 2014	C10
3. Construction of access road to Tororo Girls School at Km 8+200.			
4. Malaba Town Council Road (1.5km)	MBBP/UG/ER/2014/438	30 January 2014	C13
5. Malaba Town Ring Road (2.8km)			

6.1.3 Pursuant to Sub-clause 3.4 of the particular Conditions of Contract, the execution of the additional works was to commence within 7 days of instruction by the Employer's Representative. Therefore the commencement dates in relation to instructions in Para 6.1.2 above were as below.

Additional Works	Commencement Date
1. Construction of 1.2km additional lane to accommodate traffic parking at the URA check point on LHS from Malaba border.	14 January 2014
2. Construction of access road to Majansi High School at Km 7+800.	
3. Construction of access road to Tororo Girls School at Km 8+200.	
4. Malaba Town Council Road (1.5km)	6 February 2014
5. Malaba Town Ring Road (2.8km)	

- 6.1.4 The Contract original works were substantially completed and taken over by the Respondent in sections in accordance with Sub-clause 10.1 of the Conditions of Contract as confirmed with the issuance of the Substantial Completion Certificate as submitted in Exhibit C3, Exhibit C4 and Exhibit C6 of the Claimant's Statement of Case as follows:-

Section	Certificate of Substantial Completion and Date of Take Over
Namutere-Busia road section	14 December 2012
Namutere-Bugiri road section from Km 39+700 to Km 65+500	20 June 2013
Malaba-Namutere-Bugiri road section from Km 0+000 to 39+100 and Namutere-Bugiri Road section from Km 39+100 to 39+700 including Namutere Junction	31 December 2013

- 6.1.5 Whereas the additional works were commenced and executed after the taking over date of the last section of the original works of 31 December 2013 cited in Para 6.1.4 above, the two parties agreed that the additional works be executed as a variation under the Contract pursuant to Clause 13 of the Conditions of Contract.
- 6.1.6 Variation Order No. 1 for additional works instructed by the Respondent to be executed by the Claimant under the Contract pursuant to main Clause 13, Sub-clause 13.2 and 13.3 of the Conditions of Contract was prepared and signed by the Employer's Representative on 17 March 2014, accepted by the Claimant on 20 March 2014 and sent and received by the Respondent on 20 March 2014 for due approval as presented in the Claimant's Statement of Case Exhibit C17. Although the copy of Variation Order No. 1 in the Claimant's Statement of Case Exhibit C17 bears no signature and stamping by the Respondent, it was not contested by the Respondent as a factual record.
- 6.1.7 Instruction No. 4 in Variation Order No.1 provided that the variation order was issued on condition that there shall be an accepted time extension up to 30 May 2014. Therefore the additional works were to be completed during the period of January - May 2014 comprising an extension of time of 5 months after the date of completion of the Contract original works of 31 December 2013.
- 6.1.8 The total value of the additional works added to the original Contract was UGX 5,588,974,214 determined using bills of quantities in Schedule 3 in the Contract, with some revisions accordingly.
- 6.1.9 The matter of dispute between the two parties is in the entitlement by the Claimant of additional costs due prolongation of the Contract.

- 6.2 Contractual Basis**
- 6.2.1 The two parties agreed that the additional works be executed as a variation under the Contract pursuant to Clause 13 of the Conditions of Contract.
- 6.2.2 The Claimant was requested and submitted proposals for the additional works that were approved by the Respondent in accordance with Sub-clause 13.3 of the Conditions of Contract in Exhibit C11 and C13 of the Claimant's Statement of Case.
- 6.2.3 The additional works as variation under the Contract entitled the Claimant to extension of time for the execution and completion of the additional works pursuant to Sub-clauses 13.3 and 8.4 of the Conditions of Contract.
- 6.2.4 The Claimant submitted his claim for the financial costs in accordance with Sub-clause 20.1 following the instructions and extension of time for the execution and completion of the additional works under the Contract pursuant to Sub-clause 8.4 and the variation of the Contract pursuant to Sub-clause 13.1.
- 6.2.5 The Respondent's position as submitted in its Statement of Defence and argued in the hearing is that the costs the Claimant is seeking as incurred within the 5 months in which the additional works were carried out are all inclusive in the rates and prices as provided in Guiding Note 3 under Schedule 3 in the Contract as presented in Exhibit D8 of the Respondent's Statement of Defence submitting that the Claim lacks contractual basis.
- 6.2.6 The rates and prices under Schedule 3 of the Contract include all construction plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract as provided in Guiding Note 3 of Schedule.
- 6.2.7 It is the Adjudicator's opinion that the coverage and considerations included in the rates and prices in Schedule 3 used for the valuation of the additional works are to the extent appropriate for the scope of the additional works but not the entire resources mobilized by the Claimant under the Contract.
- 6.2.8 By the fact that the Contract was extended for the execution and completion of the additional works under the Contract, the Claimant was obliged to keep and maintain on Site his equipment that was brought on the Site deemed to be exclusively intended for the execution of the Works under the Contract pursuant to Sub-clause 4.17 of the Conditions of Contract.
- 6.2.9 The Claimant's resources provided for the execution of the Contract were required until the Taking Over of the Works as per Clause 10.1 of the Conditions of Contract in accordance Sub-clause 4.23 or earlier as would be instructed by the Employer's Representative in accordance with the requirement and as deemed necessary for the execution of the outstanding works.

6.2.10 It is therefore the Adjudicator's considered opinion that the Claimant's financial claim for time related cost due to the extension of time for the execution and completion of the additional works has grounds under the provisions of Sub-clause 20.1 of the Conditions of Contract.

7 Procedural Requirement and Compliance

7.1 It is required of the Contractor under Sub-clause 20.1 of the Conditions of Contract that if he considers himself to be entitled to any additional payment under any Clause of the Conditions of Contract or otherwise in connection with the Contract to give notice to the Employer, describing the event or circumstance giving rise to the Claim. The notice is to be given as soon as practicable and not later than 28 days after the Contractor became aware or should become aware of the event or circumstance.

7.2 In compliance with the above requirement, the Claimant issued its notice to claim for extension of time and additional payment to the Employer's Representative vide letter Ref. SBI/510/SNC/02 14/312 dated 22 February 2014 included in the Claimant's Statement of Claim Exhibit C18 following the issuance of the Employer's Representative letters for additional works as follows:

(i) Ref. MBBP/UG/ER/2013/431 dated 07 January 2014 for construction of 1.2km additional lane and access to schools;

(ii) Ref. MBBP/UG/ER/2014/438 dated 30 January 2014 for additional road 1.5km in Malaba Town and Ring Road 2.8km.

7.3 The notice given by the Claimant referred to in Para 7.2 was given 23 days after the Employer's Representative letter referred to in Para 7.2 (ii) above.

7.4 The Claimant's notice is therefore considered given in time pursuant to Sub-clause 20.1 of the Conditions of Contract.

7.5 Both parties apparently with intensions of goodwill disregarded the stipulated timing of the procedure subsequent to the notice to claim in Sub-clause 20.1 of the Conditions of Contract and proceeded to have the matter of the claim settled through adjudication.

8 Justification

8.1 The Respondent's note in its letter dated 29 January 2014 to the Employer's Representative in Exhibit D5 of the Statement of Defence that the additional works (Malaba Town Council Road of 1.5km and Malaba Town Ring Road of 2.8km) on the project are expected to be complete by the end of March 2014 without any time related cost was apparently not relayed in the Employer's Representative instruction to the Claimant to start the additional works in Exhibit D6 of the Statement of Defence. The note in the Respondent's 29 January 2014 is therefore considered of no effect to the Claimant's claim.

- 8.2 Extension of time for the execution and completion of the additional works required the Claimant to stay at site for the extended duration with all his manpower, equipment and facilities deployed for the completion of the works.
- 8.3 As pointed out in Para 6.2.9 above the deployed resources were required at site until the taking over of the works or until an earlier time prior to the taking over of the works as would reasonably be instructed by the Employer's Representative.
- 8.4 The full deployment of resources that were intended for the execution of the larger scope of the original works was more than the requirement for the smaller scope of the additional works.
- 8.5 This resulted in lack of full and optimum utilization of the resources during the execution of the additional works under the Contract.
- 8.6 However, the Employer's Representative having reviewed the work program for additional works submitted by the Claimant asked the Claimant to arrange the resources to complete the works before 30 May 2014 accordingly vide letter Ref. MBB/UG/ER/2014/458 dated 15 March 2014 included in the Claimant's Statement of Claim, Exhibit C17 and the Respondent's Statement of Defence, Exhibit D2. By this communication the Claimant was expected to arrange the resources necessary to complete the additional works within the approved additional works program accordingly thus relieving him of the burden of keeping at site the underutilized resources.
- 8.7 The burden of keeping at site the full deployment of resources for the works of the original scope of the Contract lasted between January and 15 March 2014.
- 8.8 It is also noted in the Employer's Representative's assessment of the Claimant's Claim that the initial start of the additional works was delayed in January 2014 due to a delay in resources of materials and identification of borrow areas to start earthworks. This was attributed to the Claimant's own delay.
- 8.9 The burden of underutilization and inefficient use of the resources by the Claimant lasted between February and 15 March 2014 which is 43 days.

9 Determination of Quantum

- 9.1 The Claimant submitted its detailed financial claim in June 2014 that was later amended in November 2014 vide letter Ref. SBI/HO/510/SNC/CL/03 dated 21 November 2014 following the request by the Employer's Representative for additional information.
- 9.2 The Claim quantum submitted by the Claimant covered indirect and site overhead costs for the period of January – May 2014 including:

- 1) Equipment site cost
- 2) Equipment in quarry

- 3) Lease for quarry
- 4) Lease for borrow pit
- 5) Local employees salary for main site
- 6) Local employees salary for quarry site
- 7) Security
- 8) Expatriate salaries
- 9) Overhead cost
- 10) Site office expenses

- 9.3 The Claimant used the comparison of the production rates for the execution of the original works and that of the execution of the additional works to determine the inefficiency/underutilization of his resources. The production rates were calculated as the cost price of the works net of the design fees divided by the duration of execution of the works.
- 9.4 The percentage of inefficiency was then applied to the amount of the indirect and site overhead costs to determine the additional payment claimed.
- 9.5 The above approach was also considered by the Employer's Representative in his letter Ref. MBBP/UG/ER/2015/504 dated 8 July 2015 in Exhibit C18 of the Claimant's Statement of Claim in working out his assessment of the Claimant's entitlement.
- 9.6 It is the Adjudicator's opinion that the above empirical method used is reasonable and justified.
- 9.7 The Claimant's value of the indirect and overhead costs listed in Para 9.2 above with the corresponding support documentation is justified as verified in the Employer's Representative's analysis of the Claimant's Claim vide letter Ref. MBBP/UG/ER/2015/504 date 8 July 2015 included in the Claimants Exhibit C19 of his Statement of Claim.
- 9.8 The Adjudicator in his analysis of the quantum in Appendix H determined that the output per day production efficiency of the additional works in comparison to that of the original contract works is 34%. The efficiency of output therefore reduced by 66% attributed to the nature and scope of the additional works compared with the original works.
- 9.9 The Employer's Representative in his letter Ref. Ref. MBBP/UG/ER/2015/504 dated 8 July 2015 in the Claimant's Exhibit C19 in his Statement of Claim made a determination of amount UGX 2,827,058,720 as the financial claim and recommended the same to the Respondent for their review and approval. The letter was received by the Respondent on 8 July 2015.

- 9.10 The amount in Para 9.9 above submitted by the Employer's Representative claimed by the Claimant has been reviewed and revised by the Adjudicator in Appendix H.
- 9.11 The analysis in Appendix H determines the output production rate for the original works based on the actual duration for the execution of the original works of 1064 days calculated from the commencement date of 1 February 2011 until 31 December 2013, the date of the taking over of the last section of the original works.
- 9.12 The justified claimable days for the additional costs have been determined as 43 days as noted in Section 8 above.

10 **Quantum**

- 10.1 The Adjudicator in Appendix H herewith has determined an amount of UGX 1,150,880,849 as additional payment entitled to the Claimant.
- 10.2 The Respondent was expected to review the additional amount within a reasonable period of 14 days and certification for payment made accordingly. The Adjudicator considers that certification for payment would have been due by 22 July 2015 from the date of the Employer's Representative's determination.
- 10.3 Pursuant to Sub-clause 14.7 the amount due for interim payment should have been paid within 56 days. The Adjudicator has determined a date not later than 16 September 2015 as the due date when the additional payment should have been made, in Appendix H.
- 10.4 Payment beyond the due date is therefore delayed payment entitling the Claimant to receiving financing charges pursuant to Sub-clause 14.8 of the Conditions of Contract.
- 10.5 The Adjudicator has made a determination of UGX 449,659,937 as financing charges in accordance with Sub-clause 14.8 of the Conditions of Contract, in Appendix H.



P. J. Magambo