

Arbitration

Appointment of arbitrator – Objection to appointment of arbitrator by KLRCA – Whether consent of parties required for such appointment – Whether KLRCA breached their duty

Sebiro Holdings Sdn Bhd v Bhag Singh & Anor

[2015] 4 CLJ 209, Court of Appeal, Kuching

Facts The appellant and second respondent had a disagreement over the appointment of an arbitrator by the Director of the Kuala Lumpur Regional Centre for Arbitration (“KLRCA”) to hear and decide their dispute. The appellant had indicated its preference over Tan Seri Datuk Amar Steve as the arbitrator due to his knowledge of locality of the place of the performance of contract. This was however objected by KLRCA and KLRCA had instead appointed the first respondent. This appointment was disputed by the appellant, claiming that the first respondent was unqualified since, not being a Sarawakian, lacked geographical knowledge of Sarawak. KLRCA claimed it was *functus officio* upon appointing the arbitrator for the arbitration. Dissatisfied, the appellant filed for the termination of the appointment of the first respondent. This was dismissed by the High Court. The appellant appealed.

Issues The issue before the Court of Appeal was whether the KLRCA breached their duty to act fairly and to consult the appellant as to whether the alternative proposed arbitrator with local knowledge would be acceptable by the appellant.

Held In dismissing the appeal, it was held that there was no breach of duty by KLRCA as the parties had agreed that in the event there is a disagreement on the appointment of an arbitrator, the arbitrator shall be appointed by the Director of the KLRCA. The section does not stipulate the requirement of consent of the parties before the arbitrator is appointed. It was also held that knowledge is not impossible to acquire and as such, is not dependent on the inherent capability of the appellant's arbitrator of choice.