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Kampala, Uganda

THE REPUBLIC OF UGANDA

19<sup>th</sup> September 2024

The Honorable Principal Judge,  
Courts of Judicature,  
High Court Building, Plot 2, The Square,  
P. O Box 7085,  
**KAMPALA.**

*Attn: Hon. Justice Dr. Flavian Zeija*

Your Lordship,

**RE: HIGH COURT COMMERCIAL DIVISION MISCELLANEOUS  
CAUSE NO.0053 OF 2024; PLINTH CONSULTANCY SERVICES  
LTD VS INYATSI CONSTRUCTION LIMITED, INYATSI GROUP  
HOLDINGS (PTY) LIMITED AND ABSA BANK UGANDA  
LIMITED.**

Reference is made to the captioned matter which was heard in the High Court of Uganda (Commercial Division) and in which a ruling was delivered by the Court presided over by the Hon. Justice Harriet Grace Magala on 30<sup>th</sup> August 2024.

The particulars of the dispute were that the Government of Uganda, through the Ministry of Water and Environment, contracted Inyatsi Construction Limited (the Contractor) to carry out construction works of the Kabuyanda Earth Dam in Isingiro District (the Project) for a contract sum of about **UGX 80,000,000,000/= (Uganda Shillings Eighty Billion)**. The World Bank funded Project is intended to alleviate severe water scarcity in Isingiro District and neighboring areas. However, a dispute arose between two companies that are not parties to the contract with Government. These companies are Inyatsi Construction (U) Ltd and another company named Plinth Construction Limited which referred the dispute to arbitration and applied to the High Court for temporary relief, pending conclusion of the arbitration.

In High Court Miscellaneous Cause No. 53 of 2024, Plinth Construction Limited sought orders, among others, that a lien/ freeze of the outstanding contractual sum owing to Inyatsi Construction Ltd from the Ministry of Water and Environment in respect of the construction works be issued by the court. In the ruling, the Court ordered:

- a) That the Bank Guarantee issued by ABSA Bank on behalf of the Contractor to the Government cannot be discharged until the arbitration dispute (*which Government is not party to*) is finally determined before the International Chamber of Commerce;
- b) That the Contractor is ordered to furnish security for costs in the form of a bank guarantee issued in the sum of Ugx. 5,000,000,000/= (Uganda Shillings Five Billion Uganda Shillings) within a period of 30 (thirty) days;
- c) That the Government of Uganda (which is not party to the dispute) be ordered to withhold the project funds in the sum of UGX. 21,221,615,641 /-= pending the hearing and final determination of the dispute before the International Chamber of Commerce; **(A copy of the ruling is enclosed to this letter marked "A")**

Your Lordship, there are serious concerns over the manner in which the above matter has been handled by the commercial division of the High Court with the result that a critical Government project funded by the World Bank has been brought to a halt through orders in a dispute to which the Government is not a party, and was not heard.

The effect of the above orders is that a security held by the Government has been encumbered, for purposes of a dispute to which Government is not a party, and in favour of a party who is not privy to the Government contract. Putting a stop on payment of contractual sums for the Kabuyanda dam means that the Project has in effect been brought to a halt. The Government will continue to pay unnecessary interest on borrowed funds, and the water stressed population of Isingiro will have to wait even longer for a solution due to the Court orders. There is also a risk of having the loan cancelled by the World Bank, if these peripheral matters continue to constrain the Project unabated, which will be a disastrous outcome.

Despite the above captioned application seeking orders affecting the rights of the Government of Uganda, the Government was neither made a party to the application nor afforded an opportunity to be heard by the Court. The





Government of Uganda has no contractual relationship with the Applicant in the matter nor is it a party to any arbitration involving the Applicant.

The Applicant in the captioned matter has since, through its lawyers, written to the Ministry of Water and Environment in a letter dated 30th August 2024, demanding that the Ministry complies with the orders of Court. **(A copy of the letter dated 30th August 2024 is enclosed and marked "B")**

We have further been made aware that the Applicant has now filed another application, **Miscellaneous Application 1789 of 2024** in which it seeks further orders from the same judge that the Project funds withheld by court order in the sum of **UGX 21,221,615,641/=**, be charged on a corporate guarantee to its benefit. The Government of Uganda has again been omitted as party to the application and is at risk of further orders being issued against its interests without it being heard.

In light of the prevailing circumstances, we have elected to lodge **High Court (Commercial Division) Miscellaneous Application No. 1921 of 2024**; *Attorney General v Plinth Consultancy services Limited & 3 others*, seeking to set aside the orders issued against the Government.

Due to the manner in which orders against Government have been issued in the captioned matter by the Honourable Court, without any regard to the Government's right to a fair hearing, we are concerned that further orders affecting the public interest maybe issued to the exclusion and prejudice of the Government of Uganda.

The purpose of this letter therefore sir is to bring to your attention the above irregularities to which we request your urgent administrative intervention in High Court (Commercial Division) Miscellaneous Cause No 0053 of 2024, and all applications arising thereunder, to ensure that the Government is heard and that justice is impartially rendered to the parties.



Pius Perry Biribonwoha  
**DEPUTY SOLICITOR GENERAL**

CC: Hon. Attorney General

Hon. Deputy Attorney General  
Solicitor General