

IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSALA
(Civil Jurisdiction)

2016/HPC/Arb 0517

IN THE MATTER OF : The Arbitration Act No. 19 of 2000

And

IN THE MATTER OF : The Arbitration (Court Proceedings) Rules 2001,
Rule 9

BETWEEN:

WENFEI LIMITED



CLAIMANT

AND

FRAVE GENERAL DEALERS LIMITED

1ST RESPONDENT

CHINA HENAN INTERNATIONAL

CO-OPERATION GROUP CO. LIMITED

2ND RESPONDENT

*Delivered in Chambers before Hon. Mr. Justice Sunday B. Nkonde, SC at Lusaka
this 24th day of February, 2017*

For the Claimant : Miss M. Mwanawasa of Messrs Dove Chambers

*For the 1st Respondent : Miss N. Sameta of Messrs Mambwe Siwila & Lisimba
Advocates*

For the 2nd Respondent : Mr. M. Nsapato of Messrs Chibesakunda & Company

RULING

LEGISLATION REFERRED TO:

1) *The Arbitration Act, Number 19 of 2000*

This is a Ruling on the Claimant's application for confirmation of the Interim Injunction granted herein to restrain the 1st Respondent whether by itself, its Directors, Officers, Subsidiary Companies, Servants and/or Agents or howsoever from dealing with the sum of US\$128,359.62 or any part of it, which has been in the custody of the 2nd Respondent until further order of the Court and the 2nd Respondent from paying the said amount of US\$128,359.62 or any part of it to the 1st Respondent until further order of the Court. The Interim Injunction was granted on 22nd December, 2016 as an Interim measure of protection during arbitration proceedings as allowed under the provisions of **Section 11** of the **Arbitration Act**.

Section 11 (4) of the **Arbitration Act** precludes the Court from granting an Order or Injunction under **Section 11** unless

- “ (a) the arbitral tribunal has not yet been appointed and the matter is urgent*
- (b) the arbitral tribunal is not competent to grant the Order or Injunction or*
- (c) the urgency of the matter makes it impracticable to seek such Order or Injunction from the arbitral tribunal.”*

When the inter-partes hearing finally took place on 2nd February, 2017 – after a few adjournments – the Court sought from the Claimant's Learned Counsel the status of the arbitral proceedings. Learned Counsel informed the Court that apart from the Notice invoking the arbitration clause exhibited to the supporting Affidavit of the originating process, nothing else has been done. The originating process was filed into Court on 31st October, 2016.

I find the revelation that nothing else has happened after the Notice invoking the arbitration clause quite startling. In granting or maintaining an interim measure of protection, in my view, the Court should also be satisfied that the applicant would not unduly or unreasonably delay the appointment of the arbitral tribunal and arbitral proceedings.

In the case before me, it is very clear that the appointment of the arbitral tribunal has been unduly or unreasonably delayed. No plausible reason has been given by the Claimant for this lapse. It is compelling to me to conclude that the Claimant has used the interim measure of protection namely, Interim Injunction I granted on 22nd December, 2016 as an end in itself. This I cannot allow.

In the circumstances, by way of Case management, I discharge the Interim Injunction I granted to the Claimant on 22nd December, 2016 on account of undue or unreasonable delay to appoint the arbitral tribunal and to proceed with arbitral proceedings.

Having so decided, I see no useful purpose to delve into the contesting arguments of the parties on whether to confirm the interim injunction or not.

Costs shall abide the outcome of the arbitral proceedings.

Dated at Lusaka this 24th day of February, 2017.



HON. MR. JUSTICE SUNDAY B. NKONDE, SC
HIGH COURT JUDGE