IN THE COURT OF APPEAL OF ZAMBIA **Appeal No. 183 of 2023**

HOLDEN AT NDOLA

(Civil Jurisdiction)

BETWEEN:

22 AUG 2024

WAMULUME KALABO **APPELLANT**

AND

HOWARD MWAPE **RESPONDENT**

CORAM: SIAVWAPA JP, CHISHIMBA, PATEL, JJA

On 19th & 22nd August 2024

For the Appellant: Mr. C. Hamwela
Messrs. Nchito & Nchito

For the Respondent: Mrs. K. M. Kabalata
Mesdames Chalwe & Kabalata Legal Practitioners

JUDGMENT

Patel, JA, delivered the Judgment of the Court.

Legislation & Rules referred to:

1. The Arbitration Act No. 19 of 2000
2. The Insurance Act, 1997, Chapter 392 of The Laws of Zambia

Cases referred to:

1. Light Weight Body Armour v Sri Lanka Army (2007) Sri LR, 412
2. Martin Misheck Simpemba Rose Domingo Kakompe v Ndone Mukanta Zambia Industrial Minerals Limited (2012) 1 Z.R 89
3. Zimbabwe Electricity Supply Authority v Maposa (1992) 2 ZLR 452
4. Christopher Ngoma v BHB Development Consultants Limited Appeal No.83/2014
5. Wise v EF Hervey (SCZ Judgment No 18 of 1985)
6. Mazoka and Other v Mwanawasa and Others (2005) ZR 138
7. Ronald Chishala v The People Appeal No 67 /2020/HN/08/2018.
8. Zambia Revenue Authority v Tiger Limited and Zambia Development Agency SCZ Judgment No. 11 of 2016
9. ZCCM Investments Holdings Plc v Vedanta Resources Holding Limited and Konkola Copper Mines Plc [2022] ZMSC 10
10. Printing and Numerical Registration v Sampson (1875) LR 19 Eq at 465
11. Swire Shipping Pte Ltd v Ace Exim Pte Ltd (2024) SGHC 211

Other works referred to:

1. Redfern and Hunter, Law and Practice of International Commercial Arbitration, third edition (London, Sweet & Maxwell 1999)

2. Dr. Patrick Matibini: Zambian Civil Procedure Commentary and Cases (Volume 1, Lexis Nexis)

1.0 INTRODUCTION

1.1 This is an appeal against the Judgment of **Honorable B.G. Shonga J,** delivered in the Commercial Division of the High Court, on 26th January 2023, under cause number 2022/HPC/Arb/0026.

2.0 BACKGROUND

2.1 It is noted that the matter in the Court below, was commenced by Originating Summons of 17th January 2022 pursuant to **section 17 (2) (a) (iii)** and **2 (b) (ii)** of the **Arbitration Act**[1], to set aside an Arbitral Award dated 1st November 2021 (The Award). The Originating Summons was filed together with the attendant affidavit and skeleton arguments of the same date. (hereinafter referred as the Application to Set Aside the Award).

2.2 The Application was duly opposed by the affidavit in opposition as well as list of authorities and skeleton arguments, all filed on 9th March 2022.

2.3 The Respondent was the Claimant and the Appellant, the Respondent in the matter before the Arbitral tribunal.

2.4 The Parties were cited as the Applicant and Respondent in the lower Court and are the Appellant and Respondent in this Court and will be referred to as they appear in this Court.

2.5 The Appellant, by its originating process, sought an Order to set aside the Final Award rendered by a single Arbitrator dated 1st November 2021, on the basis that:

i. the Award misapprehends /deals with issues not contemplated by, or not falling within the scope of the parties' actual pleadings; and

ii. that it was in conflict with public policy.

2.6 On 26th January 2023, the lower Court rendered Judgment in favour of the Respondent by which the Court declined to set aside the Award.

2.7 On 4th April 2023, a single Judge of this Court granted the Appellant leave to appeal and vacated its earlier Order of *ex parte* Stay of execution by its composite Ruling of the same date.

2.8 The appeal before us interrogates the role of the Court in applications to set aside an arbitral Award. It is trite and there is no contention that an application to set aside an Award is made in accordance with the provisions of **section 17** of the **Arbitration Act** [1] and more specifically under **subsections 2** and **3** thereof.

2.9 It is also trite that in an application to set aside an Arbitral Award, the Court is not sitting to perform the functions of appeal or as an appellate tribunal to look at the merits of the Award.

2.10 The lower Court identified two issues for determination; namely whether the alleged flaws of the Award went beyond what was submitted to arbitration and whether the Award is a violation of public policy.

3.0 DECISION OF THE LOWER COURT

3.1 In its reasoning and analysis, the lower Court dismissed both issues and found that the Award did not exceed the terms of the reference and it further considered that the Award rendered by the Arbitral Tribunal was not in violation of public policy.

3.2 In arriving at its decision, the lower Court duly interrogated its role and the limited situations in which a Court may set aside an Arbitral Award under the provisions of **section 17** of the Arbitration Act [1] which reads as follows:

> *"17. (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (2) and (3)."*

3.3 The learned Judge took the view that she was not to assume the role of an appellate Court either directly or in disguise. She stated that her duty could best be discerned from the guidance issued in the case of **Light Weight Body Armour v Sri Lanka Army.**[1]

3.4 The learned Judge identified that the issues that fell to be determined were whether the alleged flaws of the Award: (i) go beyond what was submitted to arbitration; and (ii) are tantamount to a violation of public policy.

3.5 On the question of whether the Award transcends the scope of referral, the learned Judge accepted that paragraph (iii) of subsection 2 (a) of **Section 17** of the aforementioned Act[1] permitted the Court to set aside an arbitral award if the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration. She noted that it allowed

her to set aside an award that contains decisions on matters beyond the scope of the submission to arbitration.

3.6 It was her considered view that a perusal of the Award shows that the arbitrator determined that the claimant was owed the sum of ZMW 291, 689.21 and referred to this finding in the Award.

3.7 It was her analysis of this summary that it manifestly linked the finding of the amount due, being the sum of ZMW 291, 689.21 to an issue referred to arbitration. In particular, it flowed from the claim for an order that the Respondent pays the claimant the sums due under the written agreement of 3rd June 2019.

3.8 She noted that it could not be argued that the Award went beyond the scope of the submission to arbitration. As a result, she found that the arguments presented by the Applicant under the limb failed.

3.9 With respect to the second limb, the learned Judge referred to the case of **Martin Misheck Simpemba Rose Domingo Kakompe v Ndone Mukanta Zambia Industrial Minerals Limited** [2] in which Justice P. Matibini (as he then was) interpreted the meaning of the term public policy for the purpose of **section 17 (2) (b) (ii)** [1] as follows:

> *"The term "public policy" should be understood to cover fundamental principles of law and justice from the procedural and substantive stand points."*

3.10 The learned Judge was of the settled mind that the term public policy consisted of a set of rules, principles or standards which the Courts consider

to be for the wellbeing of the public at large, which consideration is premised on the state's concerns, whether written or unwritten. She noted in the present case, the applicant went to considerable lengths to convince the Court that the reasoning or conclusion made by the arbitrator that the Agreement of 3rd June 2019, was wrong in law or fact.

3.11 The learned Judge however, agreed with the observations made in the **Misheck** case[2]. She stated that the Act did not give her the authority to set aside an Award on the ground that it was founded on an error of fact or law. She held the view that this would be an appeal in disguise.

3.12 The learned Judge further considered whether there were any fundamental flaws that would be an assault to the public policy in Zambia. It was her view that the arbitrator's determination that the two contracts were independent of each other did not create any shock nor did it eclipse the individual interests of the parties herein.

3.13 She noted, that because the import of the arbitral determination is specific to the parties, she took the view that the inequity, if any, is not so far reaching that it defies accepted standards that a sensible and fair-minded person would consider it a threat to the concept of justice in Zambia.

3.14 In view of the above, the learned Judge was not persuaded by the argument that the contract of 3rd June 2019 being legal and enforceable, notwithstanding the illegality of the contract of 18th April 2018, offended public policy. Consequently, she found that the arguments advanced by the applicant under the second limb also lacked merit and failed accordingly.

3.15 In conclusion, the learned Judge found that the Award:

i. dealt with a dispute that fell within the terms that were submitted to arbitration and was, therefore, within the scope of the submission to arbitration; and

ii. was not in conflict with public policy.

3.16 As a result, she declined to set aside the Award under **Section 17 (2)** of the Act[1]**.** Therefore, the applicant's application to set aside the Final Award of 1st November 2021 was unsuccessful and dismissed it with costs.

4.0 THE APPEAL

4.1 Dissatisfied with the Judgment of the Court below, the Appellant filed a Notice and Memorandum of Appeal on 19th April 2023, advancing two (2) grounds of appeal, namely;

i. The Court below erred in law and fact when it found that the arbitration award deals with a dispute that falls within the terms that were submitted to arbitration and is, therefore with the scope of the submission to arbitration when the arbitral award was clearly not for the amount claimed by the Respondent.

ii. The Court erred in law and fact when, having found that the contract of 18th April 2018 was illegal, it found that the related contract of 3rd June 2019 and the ensuing Arbitration award were valid and enforceable when it was established that the two contracts were connected and the illegality of one effect the other."

5.0 THE APPELLANT'S ARGUMENTS IN SUPPORT OF THE APPEAL

5.1 We have considered and appreciated the Appellant's Heads of Argument and Arguments in Reply filed on 16th June and 6th September 2023. We have noted that the arguments in reply are simply a re-hash of the Appellant's heads of argument.

5.2 It is the Appellant's submission that in spite of the High Court's conclusion that the first agreement was illegal, the learned Judge still found that the second agreement was legal and enforceable. It is his submission that this was an error as the second agreement flowed directly from the first.

5.3 The Appellant referred to the case of **Christopher Ngoma v BHB Development Consultants Limited** [4], the Supreme Court held as follows:

> *"From the authorities cited above, it is clear that the learned Judge was on firm ground when he held that the contract between the Appellant and the Respondent was contrary to public policy and was therefore unenforceable because at law, the courts may not usually enforce an agreement that is contrary to public policy. To exert influence on a public officer like the Appellant stated to have done in his evidence, is indeed contrary to public policy as public officers should be accessible to members of the public without going through intermediaries or other people... We have also taken into account the case of Lemenda Trading Company Limited v African Middle East Petroleum Co. Limited where it was held inter alia that it was undesirable to charge for using influence to obtain benefits from a person in a public position".* (Underlined for emphasis).

5.4 It is the argument that the second agreement would still be rendered illegal for the fact that the monetary benefit sought to be derived arose from a transaction involving a government institution, which was brought to the table by the Respondent.

5.5 The Appellant submitted that the Court below should have set aside the arbitration award in accordance with **Section 17 (2) (b) (ii)** of the Act [1] as the agreement between the Appellant and the Respondent was unenforceable and contrary to public policy because the Respondent acted as an intermediary of a public institution and sought to obtain benefits for that role. It was the argument that the lower Court erred in law and fact in coming to its conclusion that the award was not in conflict with public policy.

5.6 In relation to ground 2, the Appellant submitted that it is settled law that parties are bound by their pleadings. Therefore, a Court cannot award a relief based on an issue that was not claimed by the Claimant, placing reliance on the case of **Wise v EF Hervey [5].**

5.7 The Appellant's contention is that the lower Court erred when it failed to find that the single arbitrator included issues that did not fall within the scope of the arbitration as it ought to have only taken into account the issues that were specifically pleaded by the claimant.

5.8 It is the submission that the arbitrator went beyond the claims that were submitted to arbitration. The Respondent's claim was clearly for the amount of ZMW 101, 956.43. However, the arbitrator found that the amount owing was ZMW 291, 689.21. It is his submission that decisions that are made on a

misapprehension of facts or outside what has been stated in the pleadings settled by the parties, such as this matter, ought to be reversed.

5.9 The Appellant referred to **Dr. Patrick Matibini: Zambian Civil Procedure Commentary and Cases (Volume 1)** at paragraph 15.1[2], where the learned author stated as follows:

> *"it is the case that has been pleaded that has to be proved and consequently, the decision of the court cannot be based on grounds not set out in the pleadings of the parties."*

5.10 It is the argument that they have demonstrated that the Court below erred in holding that the arbitrator made a decision falling within the scope of the parties' actual pleadings and that the Court should set aside the arbitration award in accordance with **Section 17 (2) (a) (iii)** of the Act [1].

6.0 THE RESPONDENT'S HEADS OF ARGUMENT

6.1 We have equally considered and appreciated the Respondent's List of Authorities and Heads of Argument filed on 11th July 2023.

6.2 The gist of the arguments in ground 1 is that the Court below was on firm ground in arriving at its finding. It is the view that the lower Court not only addressed the existence and the essence of the two agreements, but went further in taking into consideration the claims and terms that gave rise to the dispute reflected at **pages 11- 12** of the said judgment.

6.3 The Respondent referred to the case of **Mazoka and Other v Mwanawasa and Others** [6] wherein the Court held:

"The function of pleadings is very well known, it is to give fair notice of the case which has to be met and define the issues on which the court will have to adjudicate in order to determine the matter in dispute between the parties. Once the pleadings have been closed, the parties thereto are bound by the pleadings and the court has to take them as such."

6.4 It is the submission that it is clear that the Arbitral award was within the claims presented by the parties in their pleadings, also provided for under clauses 3, 4, 5 and 6 of the Arbitral award. It is the argument that the lower Court was on firm ground to have held that the award in the sum of ZMW 291, 689.21 was premised on the 2nd agreement between the Appellant and the Respondent, which the Appellant had failed to honour and was owing to the Respondent.

6.5 Further, it was argued that it is a misapprehension under the said ground one for the Appellant to state that both the Arbitrator and the lower Court made findings that were beyond the claims that were presented by virtue of the Respondent only seeking the sum of ZMW 101, 965.43 when the other claims are specific. It is his submission that both the Arbitral award and the lower Court's judgment were based both on facts or the law and mixed facts and the law as was held in the case of **Ronald Chishala v The People** [7]

6.6 The Respondent submitted that the lower Court did not err in law and fact especially having seen earlier the Court's judgment clearly spelling out the parties' dispute that arose from the terms that were submitted to

arbitration. It was therefore, the submission that ground one of the appeal lacks merit.

6.7 In relation to ground 2, it is the submission that the claims that were submitted to arbitration were premised on two different agreements with different parties. It is his argument that the two agreements were independent of each other and that the agreement which was entered into between adult parties with capacity to contract could not have been tainted by the first agreement.

6.8 It is the Respondent's submission that the first agreement failed as one party was a director and a shareholder of an insurance brokerage company. He relied on **section 13 of the Insurance Act of 1997**[2] which stipulates as follows:

> *"(1) An insurer, any subsidiary company of an insurer or any director of an insurer or any of its subsidiary companies, shall not directly or indirectly hold shares in, or have any other financial or controlling interest in, the affairs or a broker or insurance agent."*

6.9 It was the contention that the Respondent is a general dealer who sources for individuals and corporate entities in need of various insurance policies which the Respondent in this case did. The Respondent argued that he is not restrained from sourcing for business as that is his occupation and trade.

6.10 It was the submission that the Arbitral tribunal correctly found that the second agreement was legal and therefore the ground to set aside the arbitral award for being against public policy lacks merit and must fail.

7.0 THE HEARING

7.1 At the hearing, learned Counsel placed reliance on their respective Heads of Argument as filed in Court.

8.0 DECISION OF THE COURT

8.1 We have carefully considered the grounds of appeal, the impugned Judgment of the lower Court and the submissions of counsel respectively.

At first glance, it is apparent to the Court, that the appeal is based on the same grounds that were the subject of the application to set aside the Arbitral Award before the lower Court, and on which the Judgment, the subject of the appeal was rendered. The grounds on which the application to set aside was based are noted in **paragraph 2.4** above. The grounds of appeal as noted in **paragraph 4** above canvass the same grounds. To this extent, we are of the considered view, that the appeal before us, is simply an attempt to re-litigate issues that have been substantively argued before the lower Court without necessarily referring to where and how the lower Court erred in law or fact or mixed law and fact.

8.2 It is worth noting that The United Nations Commission on Trade Law (UNCTRAL) adopted the Model Law on 21st June, 1982 which applies in this country by virtue of **section 8 of the Arbitration Act**[1]. **Article 5** of the Model Law specifies very limited instances in which a Court would interfere in the decision of the parties to use arbitration as a dispute settlement method.

8.3 In keeping with the spirit of **Article 5** of the Model Law, our Courts are enjoined to embrace the principle of limited Court intervention in arbitration. As is well known, one of the chief benefits of judicial non-intervention in arbitration is that it minimizes delays in the resolution of disputes. Obviously, the principal rationale for the non-interventionist stance is respect for party choice and autonomy.

8.4 From the onset, we find it pertinent to identify the limited scope of setting aside an Award in the strict circumstances of **section 17** (2) (iii)[1] which provides as follows. An arbitral award may be set aside if:

> *''the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of submission to arbitration provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.''*

8.5 As noted, the Appellant has canvassed two grounds of appeal on which it challenges the Judgment of the lower Court. We will combine the arguments on the arbitrator having dealt with issues outside the reference and the issue of rendering an Award that is in conflict with public policy.

8.6 The Appellant has argued ground 2 and thereafter ground 1. However, we propose to examine both grounds simultaneously. The Appellant's apparent displeasure rests on the quantum of the award, which quantum, he submits exceeded the amount claimed. We can only form the view that the Appellant

has misinterpreted the scope of the reference to dispute. It is clear to us that the dispute between the parties was simply an account reconciliation, emanating from two agreements that were before the Arbitral Tribunal.

8.7 We hasten to note that the two agreements, the subject of the arbitration, were dated 18th April 2018 and 3rd June 2019, *(the first and second agreements)*. It is noted that the nature of both agreements, was an agreement to pay commission to the Claimant (the Respondent before us) for services rendered. We reject the attempt by the Appellant to argue that there was only one agreement We have also noted the dispute resolution clause, *unnumbered*, on **page 35** of the Record, pursuant to which the Parties agreed to refer any dispute arising during the subsistence of the Agreement, to arbitration.

8.8 We note also from the same page, the *"entire agreement"* clause which provides as follows:

> *"This agreement contains the entire Agreement of the Parties with respect to the subject matter hereof and supersedes and cancels all previous negotiations, agreements or commitments by the parties whether oral or written."*

8.9 This agreement was duly executed by both parties. It is clear, and the lower Court found that there was a commission agreement entered into between the Parties. **Paragraph 6** of the Judgment of the lower Court at **page 11** of the Record, re-stated the terms of reference in the arbitration.

8.10 To the extent that the Arbitrator conducted an account reconciliation between the parties, and to the extent that the parties duly represented by

Counsel participated in the arbitration, we are satisfied that the Award did not exceed the scope of the reference to arbitration. This was noted from **page 46** and **52** of the Record. What is also noted is that there were three distinct claims made in the arbitration. These have been re-stated at *page 7* of the Respondent's heads of argument. We accept the argument that the Arbitral tribunal in its Award as seen from **pages 99 to 107** of the Record, duly interrogated the claims properly put before the Tribunal and in accordance with submission to arbitration.

8.11 We find it a deliberate ploy, aimed only at further delaying the conclusion of the dispute, to argue the position that the Award exceeded the reference. It is clear that the Appellant has misguidedly chosen to focus on only one claim in the sum of K101,965.43 as being the outstanding sum, whereas **paragraph 6** of the Judgment clearly refers to three claims made under the reference.

8.12 Ground 1 is bereft of merit, and we dismiss it accordingly.

8.13 On the ground that the Award was in conflict with public policy, we have combed the Record, the Judgment of the lower Court and have not found any evidence of how and in what circumstances the Appellant appears to canvass the argument on the Award offending public policy.

8.14 The Appellant has referred to the Judgment of the lower Court appearing at **page 22** of the Record at **paragraph 44** of the Judgment on **page J14**. The learned Judge noted as follows:

> *"44. In my view, I am not persuaded that the conclusion that the contract of 3rd June 2023 (2019) sic was legal and enforceable, notwithstanding the illegality of the contract of 18th April 2018, offends*

public policy. Consequently, I find that arguments advanced by the applicant under the second limb also lack merit and must fail. In conclusion, I find that the award: (i)....(ii) is not in conflict with public policy."

8.15 In arriving at this conclusion, the lower Court, carefully and painstakingly, directed its mind to the fact that the Court had the requisite power to set aside an Award under **section 17 (2) (b) (ii),** [1] if the offending Award was found to be in conflict with public policy.

8.16 The lower Court in its consideration of the argument on public policy, was further guided by the Supreme Court in the case of **Zambia Revenue Authority v Tiger Limited and Zambia Development Agency** [8], in which decision, the Supreme Court quoted the following from the Zimbabwean case of **Zimbabwe Electricity Supply Authority v Maposa** [3] where the Supreme Court of Zimbabwe held as follows:

"....where, however, the reasons or conclusion in an award goes beyond mere faultiness or incorrectness and constitutes an inequity that is so far reaching and outrageous in its defiance of logic or accepted standards that a sensible and fair minded person would consider that the concept of justice in Zimbabwe would be intolerably hurt by the award, then it would be contrary to public policy to uphold it."

8.17 The learned Judge in the lower Court analysed the arguments advanced and arrived at the conclusion that the meaning of the term *public policy* for the purpose of **section 17 (2) (b) (ii)** [1] should be understood to cover

fundamental principles of law and justice both from the procedural and substantive stand points.

8.18 We have noted that the term *'public policy'* is not defined in the Arbitration Act or the Model Law. We are also on firm ground in our understanding that the issue of public policy must be invoked only in the clearest of circumstances and where the upholding of an Award, would shock the conscience, be against the principles of good moral conscience or justice and where it is so outrageous as to cause hurt to the reasonable man if the Award were upheld.

8.19 It is cardinal to note that an application to set aside an arbitral award, is not and should not be seen as an appeal on the merits, nor can it be used to challenge an award arrived at on incorrect grounds of fact or law, more especially under the guise of 'public policy'.

8.20 In a recent Ruling delivered by the Supreme Court of Zambia in the case of **ZCCM Investments Holdings Plc v Vedanta Resources Holding Limited and Konkola Copper Mines Plc** [9], the Apex Court made serious pronouncements and issued guidance which ought to be heeded by litigants and practitioners alike. The Court guided that it is not the remit of the Courts to attempt to make a determination on issues that were a subject of determination by the arbitral tribunal.

8.21 The lower Court correctly noted its role in the arbitral process being purely of a complementary and not a competing one, when the lower Court stated as follows by placing reliance on the case of:

Light Weight Body Armour v Sri Lanka Army [1]*, where the Supreme Court of Sri Lanka held inter alia as follows:*

> *"....the Court cannot sit in appeal over the conclusions of the Arbitral Tribunal by scrutinizing and reappreciating the evidence considered by the Arbitral tribunal. The Court cannot re-examine the mental process of the Arbitration Tribunal contemplated in its findings nor can it revisit the reasonableness of the deductions given by the arbitrator-since the arbitral tribunal is the sole judge of the quantity and quality of the mass of evidence led before it by the parties- the only issue that needs consideration is whether the purported fundamental flaws of the award in question would tantamount to a violation of public policy".*

8.22 We note that the role of the Court is to enforce terms of contract entered into between parties and does not extend to re-writing those terms. The often-cited decision that speaks to this principle is the celebrated case of **Printing and Numerical Registration v Sampson** [10]**.**

8.23 We are further of the considered opinion that reference to the decision of the Supreme Court rendered in the case of **Christopher Ngoma v BHB Development Consultants Limited** [4]**,** is misapplied in the context in *casu.*

8.24 It is also clear, and the lower Court reasoned that the finding by the Arbitrator, that the two contracts (the subject of the reference to arbitration) were independent of each other did not create any shock nor did it eclipse the individual interest of the parties. We can only agree with the reasoning of the lower Court in arriving at this determination and in dismissing the argument on public policy.

8.25 We echo a reminder to litigants as regards the Courts intervention in arbitration, that the same should be resorted to sparingly and only in the clearest circumstances. The reason as embodied in several decisions in our jurisdiction, is to preserve the integrity of the arbitral process. It is trite that setting aside proceedings ought not to be used as a means to achieve a review of the tribunal's decision on the merits. The learned authors, **Redfern and Hunter, Law and Practice of International Commercial Arbitration** [1], at pages 417 and 418 state as follows:

> *''Arbitral rules, such as those of UNCITRAL.....provide unequivocally that an arbitration award is final and binding. These are not intended to be mere empty words. One of the advantages of arbitration is that it is meant to result in the final determination of the dispute between the parties. If the parties want a compromise solution to be proposed, they should opt for mediation. If they are prepared to fight the cause to the highest Court in the land they should opt for litigation. By choosing arbitration the parties choose a system of dispute resolution that results in the decision that is, in principle, final and binding. It is not intended to be a proposal as to how the dispute might be resolved, nor is it intended to be the first step on a ladder of appeals through national courts.''*

8.26 A strong statement was similarly echoed by a recent Judgment delivered on 16 August 2024, by the Court in Singapore, in the case of **Swire Shipping Pte Ltd v Ace Exim Pte Ltd** [11] albeit a decision of the High Court wherein Justice Mohan ended his judgment with a caution that is not repeated enough:

"Parties who have agreed to submit their disputes to arbitration do not have a right to a "correct" decision, or even a "quality" decision; all they have is a right to have a decision on matters that are within the scope of their arbitration agreement. Thus, on the facts, even though this specific award was "lacking" in quality, it was not unfair to affirm the award because in agreeing to arbitrate their dispute both parties "took with open eyes" and "accepted" with open arms the risk that the award might lack quality."

We equally counsel litigants who opt for Arbitration to accept the ensuing Award with the *open arms and open eyes principle*.

8.27 Having found no merit in the grounds of appeal, we dismiss the appeal with costs to the Respondent, to be taxed in default of agreement.

M. J. SIAVWAPA
JUDGE PRESIDENT

F.M CHISHIMBA
COURT OF APPEAL JUDGE

A.N. PATEL S.C.
COURT OF APPEAL JUDGE