

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2020/HP/ARB/008



IN THE MATTER OF: THE ARBITRATION ACT NO.10 OF 2000

IN THE MATTER OF: AN ARBITRATION

IN THE MATTER OF: THE HIGH COURT ACT ORDER 30 RULE
11 CHAPTER 27 OF THE LAWS OF
ZAMBIA

BETWEEN:

VICTOR MUKUPA (Suing as attorney
for Saul Radunsky)

APPLICANT

AND

PATCO AGRO INDUSTRIES LIMITED

RESPONDENT

BEFORE THE HONOURABLE MRS. JUSTICE M. C. KOMBE

For the Applicant:

In - person

For Respondent:

*Mr. S. Mambwe – Messrs. Mambwe
Siwila & Lisimba Advocates.*

R U L I N G

Cases referred to:

1. National Justice Compania Naviera v. Prudential
Assurance(1993) 2 LLOYD's REP.

2. **Cash Crusaders Franchising Pty Ltd v. Shakers and Movers (Zambia) Ltd (2012) 3 ZR 174.**
3. **Rodwell Kasokopyo Musamba v. M.M. Simpemba (T/A Electrical and Building Contractors) (1978) ZR 175.**
4. **Savenda management Services Limited v Stanbic Bank Zambia Limited (Selected Judgment No.39 of 2017).**
5. **John Kunda (suing as Country Director and on behalf of the Adventist Development Relief Agency (ADRA) v. Keren Motors (Z) Limited (2008/HPC/550).**
6. **China Henan International Corporation Group Company Limited v. G and G Nationwide (Z) Limited (Selected Judgement No.8 of 2017).**
7. **Crossland Mutinta and Bashir Seedat v. Donovan Chipanda (Selected Judgment No.53 of 2018).**

Legislation and other material referred to;

1. **The Arbitration Act No.19 of 2000.**
2. **The Statute of Frauds,1677.**
3. **The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.**

This is a ruling on an application for an Order to enforce an arbitral award pursuant to section 18 of the Arbitration Act No.19 of 2000 as read with Order 30 rule 1 and Order 3 Rule 2 of the High Court Act, Chapter 27 of the Laws of Zambia as amended by Act No.58 of 2020.

The application is supported by an affidavit deposed to by **VICTOR MUKUPA**, the Claimant's attorney appointed under a Power of Attorney dated 21st day of September, 2020.

He deposed that the Claimant and the Respondent entered into a contract of sale of land of Farm No.85a/A/8 situate at Kafue in extent of five (5) acres. The Respondent wrote to the Kafue Town Council on 28th day of November, 2006 confirming the sale of the said land to the Claimant and requesting the local authority to proceed to subdivide the land so that conveyancing could be completed.

On 28th December, 2015, the Respondent's Director Mr. Patrick Phiri's wife and co-administrator, a Mrs. Anne Kowa Phiri wrote to the Claimant confirming that she was aware of the transaction between the parties herein relating to the five acres of land including a river frontage to Kafue River and that the transaction took place on 28th November, 2006.

On 16th May, 2016, Mr. Chabwera Phiri, a Director in the Respondent's Company and co-administrator of the estate of the deceased Mr. Patrick Phiri who was the Director in the Respondent's company wrote to the Claimant confirming the sale of the five acres of land from the Respondent but proposed to the Claimant two options which meant to alter the terms of the original contract of sale. A copy of the said letter was exhibited and marked **"VM4."**

It was deposed that on 19th July, 2019, the Respondent's advocates, Mambwe Siwila and Lisimba Advocates wrote to the Claimant through his then Claimant's advocates, Fraser and Associates regarding the letter written on 16th July, 2019 on completion of the sale of Subdivision 8 of Subdivision A of Farm No. 85a, Lusaka. That they indicated that they had no objection to the sale of the five acres land but repeated the option to purchase a desired river frontage at the market value or a land in extent five acres away from the river frontage which Mr. Chabwera had referred to in his earlier letter to the Claimant.

That it was clear from the foregoing that despite the Respondent's Director's wife and co-administrator, Mrs. Anne Kowa Phiri confirming that the sale of the land by the deceased Mr. Phiri through the Respondent where he was a Director to the Claimant included a river frontage, the Respondent's Director and co-administrator, Mr. Chabwera Phiri and his advocates had unilaterally altered the terms of the contract, This was done by proposing terms such as the apportionment of 8m long river frontage, or land away from the river or the sale to the Claimant of additional land as conditions for additional river frontage size were not part of the initial agreement.

The above led the Claimant to declare a dispute and invoke the provision of the arbitration clause in the contract of sale resulting in the appointment of Ms. Mary Mutupa to prevail and resolve the dispute through the Chartered Institute of Arbitrators Zambia who was appointed in accordance with the Branch guidelines on appointments. The said arbitrator heard the matter subject to the construction and interpretation of the agreement and the laws of Zambia.

It was deposed that during the said arbitral proceedings, the Claimant produced a proposed site plan (at pages 13 and 14 of the Claimant's Bundle of Documents) which was also admitted by the Respondent save that they alleged that it was unilaterally determined by the Claimant. A copy of the said proposed site plan was exhibited and marked "**VM5**".

That the said proposed site plan was earlier acknowledged and referred to in the letter dated 28th day of November, 2006, by the deceased Mr. Patrick S. Phiri to the Kafue Town Council and was exhibited in the Claimant's Bundle of Documents during the arbitral proceedings.

That, having established that the completion of the Contract of Sale of the 5 acres of land was not disputed, the arbitrator ordered and directed

that the sale completion be implemented once the river frontage was agreed upon.

That the arbitrator further ordered that the Claimant was entitled to a river frontage as indicated in the proposed site plan, the size of the river frontage should be proportionate to the size of the 5 acres.

It was deposed further that on 8th September, 2020, the High Court granted leave to the Claimant to register the Final Award in accordance with the law.

That the Respondent had not completed the sale of the land as ordered with a proportionate size of the river frontage despite acknowledging receipt of the sum of USS3, 000.00 and the 60 days' period that was ordered by the Arbitrator lapsed on September, 2020.

Further that on 24th September, 2020, he wrote to the Respondent's advocates notifying them of the lapse of the 60 days' period and proposing that a river frontage of 135m which was erroneously referred to as 150m during the arbitration proceedings and was based on the initial 2 acres' piece of land be considered and agreed upon by the

parties as the proportionate size of the river frontage. A copy of the said demand letter was exhibited and marked **"VM8."**

It was deposed that on 30th September, 2020, he held a meeting with the Respondent's director, Mr. Chabwera Phiri, in the presence of his lawyer, Mr. Silas Mambwe at Mambwe, Siwila and Lisimba Advocates, where he produced the said approved Survey Diagrams. These were based on the initial proposed site plan that was produced during arbitral proceedings that they should be considered as proportionate size of the river frontage but the Respondent refused and maintained that he was going to apportion a size of 8m long as the river frontage and that he had already engaged a government surveyor to do so. A copy of the said survey diagram was exhibited and marked **"VM9"**.

He deposed that it was clear from the foregoing that the parties had failed to agree on the proportionate size of the river frontage as the Respondent had maintained the size of 8m and they had proposed the size of 135m based on the site plan which the arbitrator ordered should be taken into consideration.

That the Claimant was entitled to a river frontage indicated in the proposed site plan, which was the basis for Diagram No.SD_438/2017 and showed the size of 135m as proportionate size of the river frontage.

That he craved the court's indulgence to enforce the proportionate size of the river frontage in line with the arbitral award.

The affidavit in opposition was deposed to by **CHABWERA PHIRI**, the Director in the Respondent Company.

He deposed that all the issues in dispute between the parties relating to the sale of the 5 acres to Mr. Saul Radusnky were fully and finally determined in the Final Award delivered following an arbitration. That he noticed that in the said affidavit of Victor Mukupa an attempt was being made to re-litigate the issues determined by arbitration.

That the Respondent was not opposed to the enforcement of the Final Award as long as nothing was being read into it. It was deposed that the Respondent had infact been attempting to enforce the award by engaging a Surveyor who prepared a diagram reflecting the river frontage proportionate to the 5 acres belonging to Mr.Radunsky.

However, the Applicant did not want to accept the river frontage allotted to his 5 acres as directed by the Arbitral Tribunal and refused to remove the caveat he had placed on the property.

Further, that owing to the refusal to remove the caveat, the Respondent was forced to commence an action in the High Court under Cause No.2021/HP/0770. In the ruling dated 16th September, 2021, the High Court Judge who had conduct of the caveat application order that Cause No.2021/HP/0770 be consolidated to this action (2020/HP/ARB/008).

He deposed that he adopted and relied on his affidavit in support of Originating Summons for Removal of Caveat filed under cause No. 2021/HP/0770, which exhibited the full text of the Arbitral Award, now part of this record in further response to this application.

The Applicant filed an affidavit in reply in which he deposed that on two diverse dates, namely 2nd June 2021 and 10th February, 2022, he conducted searches at PACRA on the status of the Respondent's company and discovered that fifty percent (50%) shareholding was held by a Mr. Stephen Veriano Phiri NRC No. 126382/61/2 and the said Mr. Phiri was also the Director of the company but his whereabouts were

unknown. Whilst the other 50% shares were held by PATCO Limited whose directors were Anne Kowa Phiri with 20% shares, Chabwera Phiri with 15% share and Namukale Phiri with 15%.

Consequently, he disputed the contents of paragraph 5 of the Respondent's affidavit that they did not oppose the enforcement to the Final Award as long as nothing was not being read into it. That to the contrary, the Respondent company was not in a position to pass board resolution or execute any deed or take steps to enforce the arbitral award owing to the status of the respondent's company annual returns and other statutory obligations were not updated and its directors were unknown.

He disputed the contents of paragraph 6 and reiterated that the Respondent had unilaterally engaged a surveyor named Mr. Mutambo in defiance to the arbitrator's order and direction. Further, that the said Chabwera Phiri was not a director in the Respondent's company as he was just a director of its subsidiary called Patco Limited.

He disputed that the Applicant was forced to place a caveat on the property in issue after he discovered that the respondent was not willing

to agree on the river frontage in accordance with the arbitrator's guidance.

At the hearing of the application, the Applicant relied on the affidavits and the skeleton arguments filed in support of the application.

In the skeleton arguments, the Applicant argued that the Arbitral Tribunal made an order that the sale be completed with a proportionate size of the river frontage for Plot 85a/A/8/C in extent 5 acres which was sold to the Applicant by the Respondent through the deceased Patrick Phiri at a consideration of US\$ 16,500.00. He argued that the arbitrator declared that the Applicant was entitled to a river frontage as indicated in the proposed site plan, the size of the river frontage should be proportionate to the size of the 5 acres.

The Applicant argued that Mr. Charles Mulenga, an independent surveyor in the Department of Survey of the Ministry of Lands guided the Court that the records at Ministry of Lands showed that the proportionate size of the river frontage was already agreed upon by the parties and submitted to the Kafue Town Council on 28th November, 2006 and approved by the Ministry of Lands. The Applicant argued that this was expert opinion guidance that the Court could be persuaded to

rely on in view of the fact that this opinion was independently sought by parties on 10th and 22nd March, 2022. Reliance was placed on the case of **National Justice Compania Naviera v. Prudential Assurance** ⁽¹⁾ on the duties and responsibilities of expert witnesses in civil cases.

It was argued that once an arbitral award had been made, it was final and binding on the parties and anyone claiming through or under them. He referred to the case of **Cash Crusaders Franchising Pty Ltd v. Shakers and Movers (Zambia) Ltd** ⁽²⁾ where Mutuna J, had this to say:

“The starting point is to recognize that once the parties have decided to have their dispute adjudicated upon by way of arbitration, they are infact saying that they do not wish to avail themselves of the courts save in the limited circumstances provided by the law. Further, once an award is rendered, it is binding and enforceable upon the parties pursuant to section 20 of the Arbitration Act...”

He submitted that in the present case, the Arbitral Tribunal made an order that the contract of sale of land in extent 5 acres be completed with a river frontage proportionate to the size of the land within 60 days

of publication of the Final Award and that the Respondent should engage an independent surveyor to demarcate the land as agreed by the parties. However, the 60 days lapsed and the parties had not agreed on the proportionate size of the river frontage. The Applicant later applied for interpretation of the award which was done by the arbitrator and this interpretation constituted part of the award.

It was argued further that the arbitrator ordered and directed that the Claimant was entitled to the river frontage as indicated on the proposed site plan which was exhibited in the Bundle of Documents and formed basis of Diagram No. SD_438/2017 which had since been registered at the Ministry of Lands. That the proposed site plan was the one that had been expertly guided by the independent surveyor and also referred to by the deceased Mr. Phiri in his correspondence to Kafue Town Council when he urged them to subdivide according to the attached sketch plan.

It was submitted that the agreement relating to the actual size of the river frontage in casu met the requirements set out in section 4 of the Statute Frauds, 1677 which provides that:

“No action shall be brought upon any contract for the sale of other disposition of land or interest in land unless

the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person there unto by him lawfully.”

The Applicant urged the Court to consider all the circumstances of the case and enforce the award on the size of the river frontage as 125.357m long.

It was argued further that the Respondent was urging the Court to review or substitute its own from that of the arbitrator by arguing that the proportionate size of the river frontage was mathematical which was misleading and lacked expert guidance. That the Respondent was urging the Court to adjudicate on a matter that had already been determined. He submitted that the Respondent's assertions be dismissed with costs.

The Applicant submitted that the Final Award had since been registered in the High Court and he urged the Court to enforce it with an additional award providing for the dimension of the river frontage measuring 13m as prayed.

It was submitted that this application was meritorious and justifiable and the Respondent had to date not taken concrete steps to comply with the order and had insisted upon the terms that were never adjudicated upon by the arbitrator. He referred to the case of **Rodwell Kasokopyo Musamba v. M.M. Simpemba (T/A Electrical and Building Contractors)** ⁽³⁾ on the argument that a successful party should not be deprived of his costs or at any rate be made to pay costs of the other side.

In his oral submissions, the Applicant reiterated his arguments and submitted that the Court enforces the award and that he had no objection to the court lifting the caveat.

Learned counsel for the Respondent, Mr. Mambwe relied on the affidavit and the skeleton arguments.

In the skeleton arguments, Mr. Mambwe submitted that the application to enforce award was technically not opposed as long as there was nothing read into it.

He argued that this Court had no power to add or subtract anything from the Final Award as espoused in section 20 (1) of the Arbitration Act No.19 of 2000 which provides as follows:

“Subject to subsection (2) and (3), an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through them.”

It was submitted that any attempt by the Applicant to relitigate the issues already determined was therefore untenable.

Learned counsel for the Respondent argued that the affidavit of one Charles Mulenga on the proportionate river frontage dated 24th March, 2022 and filed by the Applicant purported to determine the proportionate river frontage for Mr. Saul Radunsky. He submitted that the site plan from which the 125.357metres were being calculated, produced in the affidavit of Mr. Mulenga was the same one that was submitted and rejected in the arbitration proceedings as could be shown by exhibit “VM5” in the affidavit of Victor Mukupa filed on 2nd June, 2021. He submitted that the affidavit of Mr. Mulenga was therefore not useful.

It was further submitted that the proportionate river frontage was mathematical. He argued that in order for the size of the river frontage to be proportionate to the size of the rest of the land, the whole size of the land should be taken into account. That the evidence before the tribunal was that the whole land measured 163.6178 hectares of land having a river frontage of 723.03 meters. He argued that a mathematical calculation of proportioning 163.6178 hectares to 723.03 meters would give an unerring 8.942 meters of river frontage to a 5-acre portion of the land. Counsel submitted that it was not possible for a 5 acre portion out of 163 hectares having 723 meters of river frontage to have a proportionate size of 125 meters as being proposed by the Applicant.

On the application for removal of the caveat, learned counsel for the Respondent submitted that the said application was not opposed and urged that it succeeds with costs to the Applicant.

In his oral submissions, Mr. Mambwe also reiterated his arguments and further submitted that they had no problem with the enforcement of the award which was in tandem with the arbitral award provided.

He argued that the Applicant referred to a diagram which the arbitral award referred to and their understanding was not that the diagram

should be the basis of the proportioning of the river frontage but rather being used as evidence that the Applicant was entitled to the river frontage because the contract did not provide so. That even if the diagram was the basis, it would have to have river frontage proportionate to the rest of the land because that was what the award clearly directed.

In reply, Mr. Mukupa submitted that the arbitrator in the award guided that in coming up with the size of the river frontage, guidance was to be sought from the site plan at page 15, second paragraph of the award. He argued that the Respondent was asking the court to produce a different site plan from the one at the Ministry of Lands.

Those were the submissions by the parties which I have considered in arriving at this decision.

Before I consider the application for enforcement of the arbitral award, I find it prudent to first consider the question relating to the removal of the caveat.

In the affidavit in support of originating summons for removal of a caveat, the Applicant under cause 2021/HP/0770 who is the

Respondent herein contends that the 1st Respondent, the Applicant in this case, placed a caveat against the property on or about 17th July, 2019 as a result of which it was not able to register the diagrams for the 1st Respondent's 5 acres with its proportional river frontage.

It is contended that the 1st Respondent placed a caveat against the property at a time when there was a dispute on the amount of the river frontage due to him, and that dispute had already been resolved.

The 1st Respondent is however not opposed to the Court lifting the caveat.

The application is anchored on the provisions of **sections 81(1) and 82 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.**

Section 81 of the Lands and Deeds Registry Act provides as follows;

“(1) Such Registered Proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Lands Tribunal, Court or

Judge thereof to show cause why such caveat should not be removed.

“(2) Such Court or Judge upon proof that such a person has been summoned, may make such order in the premises, either ex parte or otherwise, as to such Court or Judge seems meet.”

It is clear from the above that what qualifies one to place a caveat is that the person must show that they are beneficially interested or that they have an enforceable interest in land justifying them to interfere with the rights of the registered proprietor.

Further, section 82 of the Lands and Deeds Registry Act provides as follows:

“(1) Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as may be just.

(2) Such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.”

According to section 82, a person who lodges a caveat without reasonable cause is liable to make any person who has sustained damage by making compensation.

It is not in dispute that the 1st Respondent was beneficially interested in the subject land when he placed the caveat and thus had reasonable cause to do so. He has however, not opposed the removal of the caveat.

I therefore order that the caveat entered by the 1st Respondent on 17th July, 2019, on Farm No.85a/A/8-Southern Province be removed forthwith.

I now move to consider the application to enforce the arbitral award.

The gist of the application is that the Arbitrator awarded that the sale of Farm No.85a/A/8-Southern Province, be implemented once the river frontage was agreed upon and further that the claimant was entitled to a river frontage as indicated in the proposed site plan, which size should be proportionate to the size of the 5 acres.

It is contended that the Respondent did not comply with the order of the Arbitrator and further that the parties have failed to agree on the proportionate size of the river frontage. The Applicant contends that he is entitled to a river frontage indicated in the site plan, which was the basis upon which Diagram no.SD_438/2017 and shows the size of the 135 meters as proportionate size of the river frontage.

The Respondent on the other hand argues that it is not opposed to the enforcement of the award save to argue that all the issues relating to the sale of the 5 acres were already determined in the Final Award following an arbitration and that the Applicant was attempting to relitigate the said issues.

That the evidence before the tribunal was that the whole land measured 163.6178 hectares of land having a river frontage of 723.03 meters. He argued that a mathematical calculation of proportioning 163.6178 hectares to 723.03 meters would give an unerring 8.942 meters of river frontage to a 5acre portion of the land. Counsel contended that it was not possible for a 5 acre portion out of 163 hectares having 723 meters of river frontage to have a proportionate size of 125 meters as being proposed by the Applicant.

Section 20 (1) of the Arbitration Act No.19 of 2000 provides as follows:

“Subject to subsection (2) and (3), an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through them.”

Subsection (1) shall not affect the right of a person to challenge the award by any available process provided for in this act.

(3) Where the time for making an application to set aside an arbitration award has expired or where the application has been refused by a court, the award shall be deemed to be, and shall be enforceable in the same manner as, an order of the court.

It is clear that an award made by an arbitral tribunal is final and binding on the parties to it and any persons claiming through them. The finality and binding nature of the award is however subject to subsections (2) and (3).

The Supreme Court in the case of **Savenda management Services Limited v. Stanbic Bank Zambia Limited** ⁽⁴⁾ on the import of sections 20 stated as followed:

“Subsection (2) preserves the right of a person to challenge an award under the avenues provided in the Act. As for subsection (3), our understanding is that, although it provides for enforcement of an arbitration award in the same manner as an order of the Court, it does not give the Court jurisdiction to alter the arbitral award in any way.”

The Court further stated at page J24:

“In our view, the Courts do not have jurisdiction to sit as appellate courts to review and alter arbitral decisions.”

It is clear that even though section 20 provides that an arbitral award will be enforced in the same manner as an order of the Court, it does not give the Court jurisdiction to alter the arbitral award in any way.

Similarly, in the case of **John Kunda (suing as Country Director and on behalf of the Adventist Development Relief Agency(ADRA) v. Keren Motors (z) Limited** ⁽⁵⁾, the Court stated as follows:

“By choosing arbitration, the parties choose a system of dispute resolution that results in a 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.”

It can be stated that the effect of choosing arbitration is that any matter determined by an arbitral tribunal cannot be subject to another arbitral tribunal or to any other national court for determination unless it has been set aside on the grounds under section 17 of the Arbitration Act. The Applicant herein has not applied to set aside, but to enforce the arbitral award.

The consequence of an award as to the issues between the parties and on the jurisdiction of the arbitrator lies in the principle of res judicata.

In light of the above, I will neither consider the issues that fell for determination before the arbitrator nor give an interpretation of the award made by the arbitrator as doing so would be reviewing that decision. That is not my role. I will therefore narrow down the Applicant's issues to that of seeking an order to enforce the arbitral award.

In the final award, the arbitral tribunal was of the view that what was in contention was not the sale of the 5 acres but the size of the river frontage to be allocated to the Claimant. The arbitrator after reviewing the evidence found as follows:

“The Claimant has failed to prove his case on the claim to have 150 meters of the river frontage on the 5 acres of land as no evidence has been adduced to confirm this part of the agreement. Review of the contract of sale agreement of the initial 2 acres of land mentions nothing about the size of the river frontage. The Claimant is entitled to a river frontage as indicated in the proposed site plan, the size of the frontage should be proportionate to the size of the 5 acres. I hereby direct that an independent surveyor be engaged to calculate the proportionate

of the dimension of the river frontage which the claimant is entitled to, and the cost of the survey be borne by the Respondent.”

The Claimant failed to prove the claim to have 150 meters of the river frontage on the 5 acres of land. It was therefore ordered that the claimant is entitled to a river frontage as indicated in the proposed site plan. The size of the frontage should be proportionate to the 5 acres of land to be calculated by an independent surveyor.

It is settled law that the role of the Courts when it comes to arbitration is merely complimentary and meant to assist the arbitral process to be effective because it is manned by private citizens without systems to make it effective such as those available to the Courts. This principle was illustrated by Mutuna J, as he then was, in the case of **Cash Crusaders case.**

This principle was restated by the Supreme Court in the case of **China Henan International Corporation Group Company Limited v. G and G Nationwide (Z) Limited** ⁽⁶⁾ where it was stated that:

“The only role that a court plays in arbitral proceedings is that prescribed by the Act and Model Law to supervise

arbitration by way of providing a forum for setting aside awards and challenging decisions on jurisdiction and to compliment the arbitral process by way of providing a forum for registering an award for execution purposes and the appointment of arbitrators where the appointment process breaks down.”

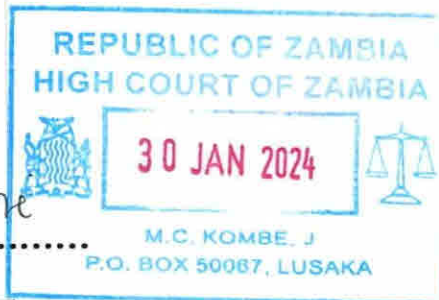
In exercising the complimentary and supervisory role of the Court in arbitral proceedings, I find it prudent to stay within these confines as determining issues already decided by the arbitrator would raise the question of jurisdiction. The question of jurisdiction has been canvassed by the Supreme Court in a plethora of cases including the case of **Crossland Mutinta and Bashir Seedat v. Donovan Chipanda** [7] where it was held that:

“The decision of a court which purports to exercise a jurisdiction it does not have amounts to nothing. This is better illustrated by the latin maxim, *ex nihilo nihil fit* (from nothing, nothing comes).”

It is thus clear that the decision of a court which purports to exercise jurisdiction it does not have amounts to nothing. Jurisdiction must therefore be acquired before it is given.

In light of the foregoing, I order that pursuant to section 18 of the Arbitration Act No.19 of 2000, the Claimant (Applicant herein) is at liberty to enforce in the same manner as a judgment or order the Final Award dated 8th July, 2020 of the Arbitrator, **MARY MUTUPA**.

DELIVERED AT LUSAKA THIS 30TH DAY OF JANUARY, 2024.



.....
M. C. KOMBE

JUDGE