



**IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
LILONGWE REGISTRY
COMMERCIAL CASE NO. 1 OF 2020**

**In the matter of S.27 of the Arbitration Act , Cap 6.03 of the Laws of Malawi
And**

In the matter of and arbitration award between

BEN CHIKA t/a INVISIBLE THREAD..... APPLICANT

AND

MACRA COMMUNICATIONS REGULATORY AUTHORITY..... RESPONDENT

Coram: Hon. Justice Charlotte Wezi Mesikano Malonda

Dr Zolomphi Nkowani, Counsel for the Applicant

Mr Khumbo B Soko , Counsel for the Applicant

Mr. Innocent Kadammanja, Counsel for the Respondent

Mr. Nanga , Court Clerk

RULING ON APPLICATION TO SET ASIDE AN ARBITRAL AWARD

Background

1. This is an Application for an Order to set aside an Arbitration award and Order registering an Arbitration award, made under Section 24 (2) of the

Arbitration Act , Cap 6.03 . The Application has been made by the Defendant Malawi Communications Regulatory Authority, herein referred to as MACRA .

2. The Defendant, engaged Ben Chika trading as Invisible Thread, the Claimant, for the delivery of 2016 of 500 Executive Business organizers at the value of MK10,193,750.00 and Diaries at MK4,543,500.00 under tender number MACRA/IPC/CAL/DIA/2016/01. The total value of the Contract sum was MK14,737,250.00. To facilitate this, on 28th September, 2015, the Defendant notified the Claimant of the award of public contract which has been exhibited 'ZPI' in the Sworn statement in Opposition of Mr Zolomphi Nkowani. The agreement had a performance period of 4 weeks. The parties entered into a Contract governed by the Malawi Government General and Special terms contract (hereinafter to as GCC and SCC respectively. The Copy of the executed Contract was not exhibited. By clauses 10.2 of the said GCC, the said conditions disputes arising thereunder were to be resolved through arbitration.
3. Both parties filed written submissions in support and opposition of the application. The Claimants application is supported by the sworn statement of Counsel Zolomphi Nkowani , sworn on 8th September 2020 with exhibits and skeleton arguments in Opposition. The Respondents opposition is supported by the sworn statement of Counsel Innocent Kadammanja , sworn on 18th June 2020 with exhibits, 19th October 2020, skeletal arguments of 19th October 2020, and submissions of 29th January 2021. The Claimant did not file any supplementary submissions.

4. The Parties both in their pleadings have explained what happened during the course of contract performance. In the course of performance of the Contract, the Claimant failed to deliver within the agreed period. By February 2016, the claimant had only delivered 100 Executive organisers. The Respondent emailed the claimant expressing their displeasure with the delays on 22nd February, and they advised that if the organisers are not delivered by 26th February 2016 the contract would be cancelled.
5. The Claimant requested an extension of time and the Respondent extended the delivery time to 24th March 2016. Further the Claimant failed to deliver and asked for another extension to 24th April 2016, to which the Respondent refused and eventually canceled the contract.
6. The Claimant wrote the Respondent on 15th June 2016 asking for them to accept delivery of the remaining 400 diaries, but the respondent refused.
7. On 25th January 2017, the Claimant through his lawyers communicated his claim for damages for breach of contract by the respondent to refuse delivery of the remaining goods and repudiation of the contract. Exhibit of the letter of demand is 'ZK2'. Failing which the Claimant proposed that the matter should go for mediation before a single arbitrator, proposing Mr Yambani Mulemba as arbitrator.
8. On 8th October 2018, the Respondent accepted for the matter to go for mediation before Mr Yambani Mulemba. Exhibit of the no objection letter 'ZP3'.
9. On 5th December 2018, Mr Gift Nankuni accepted to be arbitrator in the matter, based on an appointment letter he received on 29th November 2018.

The Letter of acceptance is exhibited 'ZP4'. He further informed parties to submit their Arbitration bundles, but did not indicate a deadline to the same.

10. On 7th November 2019 the arbitrator confirmed his acceptance of appointment and expressed his concern that the Arbitration had not started. The Letter of communication is exhibited 'ZP5'. The Arbitrator set 15th November 2019 as a date for a preliminary meeting to come up with a road map for the arbitration process. The preliminary meeting was held as scheduled but both parties have not exhibited the record of the meeting.

11. On 17th March 2020, six months later, the arbitrator acknowledged that he had received the claimants Court bundle, but there was no progress in the Arbitration proceedings. The date and time for the arbitration was set at 17th April 2020 at 2:00pm and both parties were addressed in this communication. The Claimant was advised to set up a WhatsApp group for ease of communication before the stated date. Exhibit of the letter ' ZP 6'.

12. The Respondent did not submit their Statement of Defence during the Arbitration proceeding, neither did they submit by 26th November 2019 because the Claimant also missed the deadline and only served them the Arbitration Bundle in March 2020. Despite receiving communication from both the Claimant and Arbitrator on the progress of the case, the Respondent depones that everyone missed the deadlines agreed on the 15th November 2019 meeting so in their belief, the Arbitration proceedings were no longer valid.

13. The Arbitration eventually took place and the final award was delivered. The Arbitrator made and published his award on 1st June 2020.

14. The Arbitration Award was Registered by the court on 15th June 2020 in accordance with Section 27 of the Arbitration Act and thus upon registration enforced as a Judgement of the Court in terms of Order 28 rule 6 of the Courts (High Court) Civil Procedure) rules 2017. A seizure and sale Order was subsequently granted on 17th June 2020 for the sum MK14,737,250.00.
15. The Claimant further filed a Notice of Assessment of Interest which was scheduled for hearing on 30th June 2020. This eventually never took place because the Respondent was granted a Stay of Execution on the Arbitration award and Order Registering the Award.
16. This now is an application by the Respondent to set aside the Arbitral Award, based on the conduct of the Arbitrator in the proceedings due to lack of impartiality through the following ways:
- 1. There is no similarity in treatment of delays by the respective parties;*
 - 2. There is no full disclosure in the Arbitral award that the claimant filed his process late but no sanctions were imposed ;*
 - 3. There is no disclosure that the failure by the claimant to file the process on time prompted the cessation of the applicability of the arbitration agreement .*
17. There are Affidavits in support of and in opposition to the Application, as well as Submissions, which have been duly filed by the parties. I have had recourse to these documents in my consideration of this matter.

Issues

18. The Legal Issues arising from the background are as follows:

a. Whether the Arbitration agreement was valid ;

i. Whether the Arbitration agreement was valid from the time that the Arbitration clause was invoked until the Publication of the award?

b. Whether there was loss of jurisdiction by the Arbitrator;

i. Whether the Arbitration agreement was nullified by the failure of the parties to meet set deadlines as agreed at the meeting of 15th November 2019?

ii. whether the Arbitrator was estopped from proceeding with the arbitration process?

c. Impartiality of the Arbitrator ;

i. Whether the Arbitrator was estopped from proceeding with the Arbitration process having failed to manage to stick to timelines for submission of Arbitration bundle ie. Allowing the Claimant to delay by 4 months , yet proceeding with the hearing after the Respondent had delayed by 3 months ?

d. Defence or otherwise good reasons to warrant setting aside of the Order of Registration of the arbitral award and the arbitral award itself.

i. Should the Registration Order and Arbitration award be set aside?

- ii. Is the application raising a triable matter?

The Law

19. O.1, r.5 (1) of the Courts (High Court)(Civil Procedure) Rules, 2017, provides that the overriding objective of the Rules is to deal with civil proceedings justly, which includes ensuring that parties are on an equal footing; saving expenses and dealing with a proceeding in ways which are proportionate to the amount of money involved, importance of the proceeding and the complexity of the issues; ensuring that a proceeding is dealt with expeditiously and fairly and lastly, allocating to a proceeding an appropriate share of the court's resources, while taking into account the need to allocate resources to other proceedings.
20. The court is mandated to further the overriding objective by active case management, which includes encouraging parties to use an alternative dispute resolution procedure, if the court considers it appropriate and facilitating the use of such procedure.
21. One such alternative dispute mechanism available and recognized under the law is arbitration – where parties, like the present, under auspices of an arbitration clause, voluntarily submit to an independent third party for resolution of disputes. The Arbitration Act (Cap. 6:03 of the Laws of Malawi) (hereinafter “the Act”) provides for and regulates the conduct of arbitration in Malawi. Of relevance to this Motion is section 17 and section 24(2) thereof.

22. Section 17 provides that unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively. It will therefore be deemed that the Applicant and the Respondent were agreed that any arbitral award made under the arbitration clauses of the Contract would be final and binding upon them, unless section 24 could competently be invoked.

23. Section 24(2) provides that where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or the award has been improperly procured, the court may set the award aside. It will be remiss of the court to not be mindful that the power of the court to set aside an arbitral award is restricted and so, must be exercised temperately. What is envisaged under this provision is not an appeal of the arbitral proceedings. It also is not about the court merely setting aside the decision of the arbitrator because it would have arrived at a different decision on the facts.

24. As I understand the law, section 24 must be read and applied with section 17, i.e. unless otherwise stipulated by the parties in the arbitration agreement, an arbitral award is deemed final and binding on the parties, unless the arbitrator has misconducted himself/herself or the award has been improperly procured.

25. Section 18 of the Arbitration Act provides the Arbitrator Power to correct slips, unless a contrary intention is expressed in the arbitration agreement. It reads, '*the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission*'. Read with Section 23 of the same Act which empowers the Court with the Power to remit award , it reads '*(1) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire*'.

26. Section 25 of the Arbitration Act - Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud, '*(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality*'.

27. Section 27 of the Arbitration Act provides for the Enforcement of award '*An award on an arbitration agreement may, by leave of the Court, be*

enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award’.

28. What constitutes misconduct has not been expressly defined by the Act. However, in the case of *Chikosa v Attorney General 11 MLR 454*, Banda J (as he then was) said this regarding misconduct:

“ In my view, misconduct as used in s. 24 of the Act is used in the technical sense as denoting an irregularity and not any moral turpitude. The term also covers cases where there is a breach of any principle of natural justice. ...The rules require an arbitrator to act fairly and in good faith, without bias and in a judicial temper. There must be nothing done which is contrary to the essence of justice.”

29. According to Halsbury’s Laws of England,

“It is difficult to give an exhaustive definition of what amounts to misconduct of an arbitrator or umpire. The expression is of wide import, including on the one hand bribery and corruption and on the other a mere mistake as to the scope of the authority conferred by the agreement of reference or a mere error of law appearing on the face of the award.”

30. Further, Halsbury’s Laws of England suggests the following as including misconduct: an arbitrator failing to decide all matters which were referred to him; if by the award the arbitrator purports to decide matters which have not in fact been included in the agreement of reference; if the award is inconsistent, uncertain, ambiguous or on its face erroneous in matters of

law; if there is a mistake of fact which has been admitted or is clear beyond any reasonable doubt; if there has been irregularity in the proceedings or where the arbitrator has failed to act fairly towards both parties. In order to be a ground for setting aside an award, an error in law on the face of the award must be such that there can be found in the award, or in a document actually incorporated therewith, some legal proposition which is the basis of the award and which is erroneous.

Analysis and Findings

a. Whether the Arbitration agreement was valid ;

i. Whether the Arbitration agreement was valid from the time that the Arbitration clause was invoked until the Publication of the award?

31. The Parties submitted themselves to mediation as a form of dispute resolution both during signing of the contract, and in their subsequent actions. The letter of no Objection by the Defendant on 8th October 2018 marked exhibit 'ZP3', and the subsequent mutual appointment of a single arbitrator validated the Arbitration process. The parties also during their preliminary meeting held on 15th November 2019, confirmed the appointment and established a program for the arbitration process of the arbitrator. The Defendant did not at any point in time, in writing formally request for a termination of the arbitration process, rather the defendant boycotted participating in the arbitration process due to some unclear disagreements that arose along the way after the initial tripartite meeting. I find that the non-participation of the Defendant in the Arbitration process did not in any way affect the validity of the Arbitration agreement, which remained

intact until the date of publication of the Arbitration award. The removal of an Arbitrator has to be done competently and a party cannot simply walk away from proceedings with the view of frustrating the Arbitration process. Section 24 (2) of the Arbitration Act provides for the removal of an Arbitrator and at this was not done. The court finds the Arbitration agreement remained valid until the Publication of the award.

b. Whether there was loss of jurisdiction by the Arbitrator;

i. Whether the Arbitration agreement was nullified by the failure of the parties to meet set deadlines as agreed at the meeting of 15th November 2019?

ii. whether the Arbitrator was estopped from proceeding with the arbitration process?

32. At the centre of controversy is the failure of both parties and the Arbitrator to meet the timelines set at the preliminary meeting of the 15th of November 2019. In the defendants sworn statements of 18th June 2020 and 19th October 2020, sworn by Mr Innocent Kadam'manja , and in their submissions to the court , the defendants submit that the Arbitrator condoned a delay a filing of the mediation bundle by the Claimant by 4 months, yet penalized the delay to file a defence by the Defendant by 3 months. Hence condoning a more serious delay by one party. The Defendant further submits that the Arbitrator did not communicate the date of the delivery of the award, yet communicated the same to the claimant and that the Arbitrator communicated the final Arbitration award to the Claimant, yet concealed the same from the Defendant.

33. I find that the Defendant is raising serious allegations of perceived bias by the Arbitrator. The Defendant further depones that due to non-adherence to tripartitely agreed timeframes, any subsequent action was of no consequence, rendering the arbitration agreement inoperative and any subsequent electronic and physical serving of documents futile. According to the Defendant, the flouting of timelines by the Applicant and the Arbitrator, was to him, a deal breaker, hence rendering the Arbitration agreement dead and buried. I find that the Defendant is not contesting that he received through service documents pertaining to the Arbitration. The submission of the Claimant is therefore a true reflection, that the Defendant was served the Arbitration bundle on 17th March 2020 exhibit **ZP9** and **ZP1** of the Affidavit of service. The claimant had also submitted their Statement of claim to the Arbitrator by 13th of November 2019 before the preliminary hearing. On the other hand, the Defendant despite several reminders according to the Arbitrator, did not submit his Statement of defence. The court is not privy to what transpired between the parties between 15th November 2019 until the date set for the Arbitration on 17th April 2020, except that the date set for the arbitration was communicated to both parties on 17th March 2020 by the Arbitrator (**exhibit ZP6**) and on the same 17th March 2020, the Defendant was served the Arbitration Bundle. None of the parties has explained the communication that took place on the WhatsApp group set up.

34. The court observes the conduct of the Defendant as cantankerous. If he truly held the view that the Arbitrator was acting unfairly, he had recourse to immediate relief. Section 25 of the Arbitration Act provides Power of Court

to give relief where arbitrator is not impartial or the dispute involves question of fraud:

‘ (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

35. Based on the facts above, the Defendant sat on his rights because instead of promptly seeking an appropriate remedy from the court through an injunctive relief or applying for the court to relieve the arbitrator of his powers based on the allegations of impartiality, he opted to boycott and sabotage the Arbitration process by disengaging himself. The court finds the one sided termination of the Arbitration process based on his own admission to be in itself a breach of contract and further finds that the Arbitrator was not estopped from engaging in the Arbitration process as he was not formally disengaged from his duties as an Arbitrator through a competent process .

c. Impartiality of the Arbitrator ;

- i. Whether the Arbitrator was estopped from proceeding with the Arbitration process having failed to manage to stick to timelines for submission of Arbitration bundle ie. Allowing the Claimant to delay by 4 months , yet proceeding with the hearing after the Respondent had delayed by 3 months ?**

36. Based on the facts above the none filing for the Arbitration bundle by the Defendant despite several reminders has been confirmed by the Defendant as they admitted that they viewed the Arbitration agreement to be terminated due to none compliance with timelines. The defendant further depones in the sworn statement of 18th June by Mr Innocent Kadammanja, that due to COVID , their operations were scaled down . Hence they were not operating at full capacity due to the Government Directive of 6th May 2020, which directed none essential public workers to work from home. The court finds that this argument has no legal basis and is founded on emotion because the Defendant had legal remedies under their disposal to cure the perceived bias and impartiality of the Arbitrator using section 25 of the Arbitration Act, as opposed to sabotaging the Arbitration process to walk away from the contractual obligation to engage in Arbitration when a dispute has arisen.

37. The excuse that COVID affected the operations of the Defendants as they were working from home is immaterial as they could have even filed the Defence electronically. Where parties to an agreement have agreed that a dispute should go to arbitration, the court should be slow to interfere with that choice, and should normally grant a stay, unless there are strong

grounds for permitting the matter to proceed in the ordinary courts – see *Cott UK Ltd v Barber Ltd [1997] 3 All ER 540* applied in *The Preferential Trade Area Bank v Electricity Supply Commission of Malawi and Attorney General and Mbendera, Chibambo and Associates [2002-2003] MLR 304 (HC)*. The court finds that , allowing this case to go through the normal court processes and disregarding the Arbitration agreement, would negate the Arbitration clause which the parties agreed to in the first place.

38. The Defendant has already admitted that they did not feel legally bound to condone an arbitration agreement that was of no legal effect. The defendant's reaction was not justified in law and his defence and continued engagement in the Arbitration could have given him an opportunity to raise his contention with the conduct of the Arbitrator and Complainant. Having bound themselves by the Agreement, and in particular to the arbitration clause, it is imperative for both parties to perform their obligations and go through the Arbitration process up until to the end. As per Banda J, as he then was, parties must be bound by agreements they have freely made - *Landell Mills Associates Ltd v Marshall [1991] 14 MLR 175*. As a general rule, a person is bound by their signature to a document so that the court will not allow them to renege from it – see *National Bank of Malawi v Dairiboard Malawi Ltd [2008] MLR (Com) 45 (HC)*. The court from the sworn statements and the admission of the parties, that the Arbitrator was transparent and communicated the dates and venue of the Arbitration hearing. The adjustment of the timelines was to manage the proceedings and make progress in the matter. The court finds that this does not demonstrate bias or impartiality. The court finds the one sided termination of the Arbitration process based on his own admission to be in itself a

breach of contract and further finds that the Arbitrator was not estopped from engaging in the Arbitration process as he was not formally disengaged from his duties as an Arbitrator through a competent process.

d. Defence or otherwise good reasons to warrant setting aside of the Order of Registration of the arbitral award and the arbitral award itself.

i. Should the Registration Order and Arbitration award be set aside?

39. Is the application raising a triable matter? The Parties has raised several issues in fact and law. The Defendant in his Statement of Defence supporting the application to set aside the Arbitration award which he has now filed in this Court as exhibit **IK 8** of the sworn statement of 18th June 2020 of Innocent Kadam'anja, depones that there are irregularities with the manner in which the arbitrator disposed of the matter. The Defendant depones that their Defence demonstrates that the matter has high prospects of success through trial .

40. Upon consideration of the material before me, I come to the conclusion that there is no serious issue to be tried. Where parties to an agreement have agreed that a dispute should go to arbitration, the court should be slow to interfere with that choice, and should normally grant a stay, unless there are strong grounds for permitting the matter to proceed in the ordinary courts – see *Cott UK Ltd v Barber Ltd [1997] 3 All ER 540* applied in *The Preferential Trade Area Bank v Electricity Supply Commission of Malawi and Attorney General and Mbendera, Chibambo and Associates [2002-2003] MLR 304 (HC)*. The court finds that , allowing this case to go

through the normal court processes and disregarding the Arbitration agreement, would negate the Arbitration clause which the parties agreed to in the first place.

41. The court would like to address a few issues which have affected the reasoning behind the finding regards the status of the Arbitration award.
42. The court has found that there are several inconsistencies in the pleadings with regards the dates of events in this matter and these inconsistencies have been submitted by both the Claimant, the Defendant and the Arbitrator. I find these inconsistencies to be prejudicial to the defendant as they have ultimately raised the interest computation by the Claimant which the Arbitrator determined in his award.
43. Since the Arbitrator was tasked to determine the damages which arise out of the breach of contract, the court has reviewed the arbitration proceedings, for the sole purpose of determining whether an arbitrator misconducted himself or herself, in regard to the material that was placed before him by the parties. It will be a miscarriage of justice for the court to look the other way when presented with information that is raising errors in fact. Much as the integrity of the Arbitration proceedings are not affected, the award of the Arbitrator is affected by the following issue.
44. In the Statement of Defence by the Defendant as an exhibit of the sworn statement **IK 8**. The Defendant pleads the following which I quote verbatim:

STATEMENT OF DEFENCE

“In 2015(emphasis is mine)the Malawi Communications Regulatory Authority (MACRA) entered into a contract with Invisible threads for the supply and delivery by Invisible Threads of 500 personalised executive business organizers (organizers). The agreed delivery period for the goods was four (4) weeks from the date of the contract. The Contract though dated 29th September 2016(emphasis is mine) was actually signed on 14th December 2016(emphasis is mine).”

The defendant further pleads in his defence:

*“Invisible Thread failed to deliver within the agreed period.**By February 2016** (emphasis is mine) only 100 out of the 500 diaries were delivered”*

“By email sent to Invisible thread on 26th February 2015 (emphasis is mine), MACRA expressed disappointment with the failure of the supplier to make full delivery and advised that if the remainder of the organizers were not delivered by 26th February 2016 (emphasis is mine) the contract shall be considered cancelled and MACRA shall refuse to take delivery of the organizers ”

The rest of the Defence sticks to what happened beyond March 2016 onwards. It is clear that the Defendant is pleading that the Contract was signed in December 2016 and one would expect that contract performance will be from December 2016, onwards, with delivery spilling into 2017. However, from the first paragraph on signing of the contract, events appear to be happening in reverse.

45. The court finds that the Contract award was on 29th September 2015 based on all the submissions before it, furthermore the contract performance was

in 2016 with the performance delivery counting from the date of signing the agreement. The courts finds that the final delivery of the goods was on 15th June 2016, based on the Claimants own admission.

46. This misfortune on erroneous dating of events is presented in the Claimants Statement in Opposition. In the sworn affidavit of Zolomphi Nkowani of 8th September 2020, he depones in paragraph 3.1.1

“By letter reference Number MACRA/17/DG/jbn dated 28th September 2016(emphasis is mine), the Defendant notified the Claimant of its award ...exhibit marked ZP1.”

47. The court finds that the exhibit is actually dated 28th September 2015. The rest of the dates follows the normal sequencing of dates.

48. The Arbitrator’s Final Award is exhibited as **ZP 8** in the Sworn statement in opposition of the application of Dr Nkowani. These are the dates that the award provides in terms of key events :

*‘ 2.1.1 I was appointed as early as **July 2019**’*

48. The court finds this date to be erroneous as the Appointment letter exhibited **ZP 4** shows that the Arbitrator received communication on 28th November **2018**, accepted his appointment on 5th December 2018.

49. Regards the contract and dispute, the Arbitrator found as follows:

‘2.2

i. On 28th September 2014, the Respondent awarded the claimant a contract

iii. *A formal contract was signed on the 29th of September 2014 and the agreement had a performance period of 4 weeks.*

iv. *Due to force majeure and subsequently delivered the remaining diaries on the 15th of June 2015.'*

50. The court finds that the actual date of contract award was 28th September 2015 as per exhibit **ZP 1**, and the signing of the Contract was in December 2015 based on admission of the Defendant, and the remaining diaries were delivered on 15th June 2016 based on admission of the Defendant.

51. As per his findings, the Arbitrator found the following:

'7.4.1 The claimant supplied 100to the respondent by the 15th June 2015 pursuant to a contract between the parties dated 25th September 2014.

7.4.3 The claimant was supposed to deliver items within four weeks from 29th September 2014....'

52. The court finds that the actual date of contract award was 28th September 2015 as per exhibit **ZP 1**, and the signing of the Contract was in December 2015 based on admission of the Defendant, and the remaining diaries were delivered on 15th June 2016 based on admission of the Defendant.

53. In his final award the Arbitrator awarded the following:

'8. Final award

2. The claimant is entitled to compound interest at 10% above the National Bank of Malawi lending rate as this was a commercial transaction. Interest to

56. What is envisaged under these provisions is to ensure that the court does not merely set aside the decision of the arbitrator because it would have arrived at

arbitrator or umpire.

(1) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the

award back to the Arbitrator for reconsideration. The section reads:

Moreso, the above section, read with Section 23 empowers the court to remit an

clerical mistake or error arising from any accidental slip or omission.

arbitrator or umpire shall have power to correct in an award any Unless a contrary intention is expressed in the arbitration agreement, the

power to correct such slips. The section reads:

55. The court finds that the Arbitrator awarded the Claimant interest based on the wrong dates and this is grossly unfair on the Respondent as they will be penalized in damages and interest for a period when there was no contract between the parties. It will be remiss of the court to not be mindful that the power of the court to set aside an arbitral award is restricted and so, must be exercised temperately. Section 18 of the Arbitration Act gives the Arbitrator

June 2016 based on admission of the Defendant.

on admission of the parties, and the remaining diaries were delivered on 15th September 2015 and the signing of the Contract was in December 2015 based

54. The court repeats its finding that the actual date of contract award was 28th

court enforcing this award if not agreed and or settled by the parties.

from the date of delivery ie 15th June 2015. The same to be assessed by the accrues from 15th July 2015 giving the respondent a grace period of 30 days

a different decision on the facts, but the Arbitrator can still reconsider the matters as reference from the Court.

57. From the foregoing, I conclude that there is an error of law on the face of the award to justify setting it aside. The Court remits the award back to the Arbitrator for correction of the award in light of the clerical errors. The Arbitrator is directed to make his award not more than three months from the date of this order. The Motion is set aside and the Award and the Registration of the Award is successful and the plaintiff is condemned in costs. The Arbitral Award is set aside accordingly.

Made in Chambers this 19th Day of February, 2020.



CHARLOTTE WEZI MESIKANO MALONDA

JUDGE.