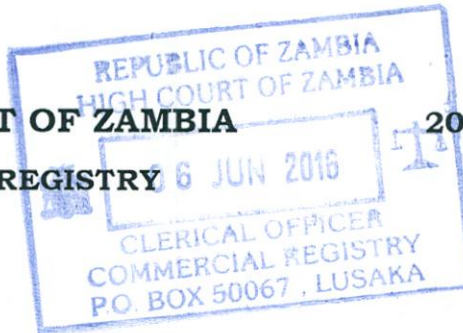


IN THE HIGH COURT OF ZAMBIA

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



2015/HPC/ARB/0203

IN THE MATTER OF:

THE ARBITRATION ACT No.19 OF 2000

AND IN THE MATTER OF:

RECOGNITION AND ENFORCEMENT

OF ARBITRAL AWARD PURSUANT

TO RULE 16 OF THE ARBITRATION

(COURT PROCEEDINGS) RULES 2001

AND IN THE MATTER OF:

THE FINAL ARBITRAL AWARD HANDED

DOWN ON THE 17TH DAY OF OCTOBER,

2014.

BETWEEN:

MOSI RESOURCES PTY LIMITED

CLAIMANT

AND

GEOHYDRO CONSULTING SERVICES LIMITED

RESPONDENT

Before the Hon. Lady Justice Dr. W. S. Mwenda in Chambers on the 17th day of May, 2016.

For the Plaintiff:

**Mr. N. M. Mulikita of Messrs. N. M. Mulikita
and Partners**

For the Defendant:

Mr. William Mulenga, Director.

RULING

On 13th April, 2016, the Respondent herein filed a Summons for an Order to Liquidate Final Agreed Arbitral Award in Monthly Instalments pursuant to Order 36 Rule 9 of the Rules of the Supreme Court. The Summons was

supported by an Affidavit deposed to by one William Mulenga, a director in the Respondent Company who was also appointed by the Board of Directors through a resolution passed on 11th April, 2016 to represent the Respondent at the hearing.

William Mulenga, the deponent, deposed that on 17th October, 2014 a Final Agreed Arbitral Award was handed down by the Honourable Mr. Justice Mathew M. S. W. Ndulube (Rtd) who was the Arbitrator between the Claimant and the Respondent. It was a term of the award that the Respondent was to pay ZMW46,138.18 to the Claimant in two equal instalments with the first instalment being paid on or before 15th October, 2014 and the second instalment to be paid on 27th November, 2014.

The deponent further averred that after the award was handed down, the Claimant continued to make demands over the same tenement from the Ministry of Mines contrary to the Final Agreed Arbitral Award. Further, the Claimant filed an application for a Prospecting Licence over the same area in disregard of the Agreed Arbitral Award. According to the deponent, this made it difficult for the Respondent to understand the motive of the Claimant on the matter and contributed to the delay in making payments of the award to the Claimant.

The deponent deposed further that the Respondent is desirous to pay off the Final Agreed Arbitral Award in two monthly instalments as agreed and as demonstrated by the efforts to pay the Claimant the sum of ZM46,138.18 on 7th March, 2015 by cheque number 001037 exhibited as "WM2" in the affidavit.

On its part, the Claimant filed an Affidavit in Opposition deposed to by one Craig Brett Horwitz, a director in the Claimant Company wherein he averred that by the order of registration of award, the Honourable Deputy Registrar awarded interest on the sum of ZM46,138.18 due to the Claimant at current

lending rate as determined by the Bank of Zambia from the date of the Final Agreed Arbitral Award till final payment.

The deponent further averred that contrary to the contents of paragraph 6 of the affidavit in support, the Final Agreed Arbitral Award does not contain stipulations that forbid the claimant from applying for a tenement from the Ministry of Mines, or filing an application for the prospecting licence over the same area as alleged, whenever the same are available for application.

It was the deponent's further averment that contrary to paragraph 7, the Respondent has totally disregarded the stipulations of the Final Agreed Arbitral Award and has not made any efforts to pay to the Claimant by cheque number 001037 as alleged from the date of the award till commencement of these proceedings; that as at the date of this application, the Final Agreed Arbitral Award has not been satisfied and the Respondent has neglected and/or refused to pay the Claimant what is due to it under the award or at all.

The deponent averred that on the grounds indicated, the Claimant earnestly craves the indulgence of the Court to grant it the fruits of its award by dismissing the Respondent's application for leave to liquidate the Final Agreed Arbitral Award in monthly instalments.

In reply the Respondent filed an affidavit deposed to by William Mulenga wherein he made a number of extraneous allegations and ventured into legal arguments, matters which an affidavit should not contain. For this reason, I have only considered paragraphs 7 and 20 where the deponent alleges that the Respondent refused to accept payment of two cheques in the sum of K166,138.18 before the arbitration proceedings and that the Respondent is still desirous of paying off the final arbitral award as illustrated in the efforts they have been making.

The Claimant filed a List of Authorities and Skeleton Arguments in support of its case. Among the authorities cited by the Claimant was section 18(1) of the Arbitration Act No. 19 of 2000 which provides that:-


“An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this section and of section nineteen”.

The arbitral award handed down on 17th October, 2014 was registered in the High Court and is binding on the parties in accordance with the provisions of Section 18 of the Arbitration Act.

It is not in dispute that the agreed arbitral award has not been paid to date and as learned Counsel for the Claimant rightly submitted, the Respondent has not made any payment into court to show its commitment to liquidating the amount. The Respondent undertook to pay the ZMW46,138.18 in two equal instalments in October and November, 2014 but has not done so to date. It is unjust for the Claimant to continue to be deprived of the fruits of the arbitral award. For this reason, I will grant the application for an Order to Liquidate Final Agreed Arbitral Award in Monthly Instalments on the following conditions:-

- (i) That the first instalment of K23,069.09 shall be paid on or before 30th June, 2016 and the second and final instalment shall be paid on or before 31st July, 2016;
- (ii) In the event of default in payment of the first instalment the whole amount of ZMW46,138.18 shall become due and payable forthwith;
- (iii) That the Respondent shall pay interest on the sum awarded to the Claimant charged at the current lending rate as determined by the Bank of Zambia from the date of the said Final Agreed Arbitral Award to date of payment.
- (iv) Costs of the application are awarded to the Respondent.

Dated at Lusaka the6th.....day ofJune....., 2016.


Hon. Justice Dr. W. S. Mwenda
HIGH COURT JUDGE