

Nile Holding Ltd v Emmanuel Kamwenje and Others

Summary

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice C.W.M Malonda
Cause Number:	Commercial Cause No. 4 of 2022
Date of Judgment:	December 01, 2022
Bar:	C. Ndalama, Counsel for the Applicant K. B. Soko, Counsel for the Respondent

The Respondents applied to the High Court, Commercial Division, seeking to strike out the Applicant's applications for leave to enforce a domestic arbitral award and for an order compelling the Respondents to do a thing, citing various procedural irregularities and the Applicant's alleged inordinate delay in seeking enforcement. The dispute arose from a prior arbitration where the Applicant obtained a favourable award in January 2020, which the Respondents subsequently failed to comply with. Around April 2022, the Applicant sought the Court's leave to enforce the award as a judgment. The Applicant also raised reciprocal irregularities against the Respondents' processes.

The principal legal questions for the Court were whether the procedural irregularities raised by both parties warranted striking out the respective processes, and critically, whether the delay of over two years in seeking leave to enforce the arbitral award barred the Applicant from doing so under the guise of the statute of limitation. The Court cured minor procedural irregularities raised by the Respondents concerning the Applicant's unsigned application, finding the use of the prescribed Form 4 curative, and the lack of pagination on both parties' sworn statements, as neither occasioned prejudice. However, the Court declared paragraphs containing legal arguments in the Respondent's sworn statement ineffectual for offending Order 18 rule 6, which restricts sworn statements to factual evidence.

The Court dismissed the Respondents' substantive preliminary objection regarding inordinate delay. The Court reasoned that the Arbitration Act contains no provision preventing registration due to delay, and the arbitral award remained intact and effective given the irrevocable nature of the arbitrator's authority under section 3 of the Act. Relying on precedent regarding striking out for want of prosecution, the Court found the delay from January 2020 to April 2022 was not "inordinate" in the circumstances, especially considering inter-party communication occurred five months after the award. Consequently, the preliminary objection to strike out the application for leave to enforce the award was not successful. However, the objection to the application for an order compelling a party to do a thing was sustained as premature, as such an order is only enforceable after the award has been registered as a court judgment. The Court granted the Applicant leave to enforce the arbitral award as a judgment, giving the Respondents 14 days to apply to set aside the registration, if so

minded. The Court ordered each party to bear its own costs.