



Trinity Term  
[2025] UKPC 31  
Privy Council Appeal No 0023 of 2024

## **JUDGMENT**

**Ex Parte Lakeside Litigation I LLC (Appellant)**

**From the Supreme Court of Mauritius**

before

**Lord Reed  
Lord Hodge  
Lord Sales  
Lord Leggatt  
Lord Richards**

**JUDGMENT GIVEN ON  
3 July 2025**

**Heard on 21 January 2025**

*Appellant*  
Tom Richards KC  
Tom Leary  
(Instructed by Sheridans Solicitors LLP (London))

## **LORD HODGE:**

1. This appeal raises an important matter concerning the effective operation of Mauritian legal procedures by which the Supreme Court addresses applications for interim measures in support of an arbitral award in an international arbitration. On this occasion the Supreme Court has failed to apply those procedures correctly. As the Board explains in this judgment, because the appeal concerns an ex parte application for an attachment and a Mareva injunction, which the Board will hereafter describe as a freezing order, to prevent the dissipation of money due to the debtor under an arbitral award, the appeal has been conducted in private. The Board has also ordered that there be no publication of its judgment until the applications for interim measures have been finally determined. Thereafter, the Board will publish this judgment on its website and it can be published in Mauritius.

### **(1) The arbitral awards**

2. Customs and Tax Consultancy LLC (“CTC”) entered into a contract dated 5 June 2008 with the Democratic Republic of Congo (“the DRC”) to provide technical assistance to the DRC to reform its Customs and Excise Office. The contract was governed by French law (article 23) and contained an arbitration clause (article 24) providing for ICC arbitration of disputes between the parties with the seat of the arbitration in Paris. The arbitration clause contained this provision:

“Les parties se conformeront à toute sentence arbitrale, et à ce titre, l’Etat [sc the DRC] renonce expressément à toute immunité de quelque nature que ce soit.”

(The parties will comply with all arbitral awards, and in this connection the state expressly waives any immunity of any kind whatsoever)

3. Disputes arose between CTC and the DRC and by an ICC arbitral award dated 22 July 2015 the arbitral tribunal found that: (i) the DRC had breached the contract, (ii) the DRC was required to pay CTC US\$91,696,347, and (iii) the DRC was required to pay CTC a further sum of US\$3,750,000. An addendum to that award dated 19 November 2015 corrected an error in the calculation of damages and awarded CTC a further US\$853,751. On 22 February 2016 the arbitral tribunal issued a further award which awarded CTC a further sum of US\$162,500 and costs of US\$650,000 and EUR 200,000. The total sums awarded to CTC by the arbitral tribunal exceeded US\$96million, and, allowing for interest, the total debt due from the DRC now exceeds US\$335million.

4. The DRC sought to set aside the first award and addendum on the grounds of public policy but the Cour d'Appel de Paris dismissed the application by order dated 16 May 2017. Since then CTC obtained a default judgment in the US District Court for the District of Columbia ("the DC judgment") on the arbitral awards and the DC judgment has been registered with the US District Court for the Southern District of New York and become enforceable there. In October 2020 the arbitral awards were declared executory in both Belgium and Luxembourg.

5. Lakeside Litigation LLC ("the Appellant") took an assignment of the benefit of the arbitral awards by an assignment agreement dated 16 March 2020. A certificate of assignment was executed on 15 June 2020.

6. The Appellant believes that two DRC companies, Kamoto Copper Company ("Kamoto") and Mutanda Mining SARL ("Mutanda"), pay mining revenues into bank accounts with the Standard Bank (Mauritius) Ltd ("Standard Bank"), and that monies from those accounts are used to pay substantial mining royalties to the DRC.

7. Because the DRC has failed to comply with the arbitral awards, the Appellant has applied to the Supreme Court in Mauritius to attach monies held by Kamoto and Mutanda with Standard Bank and has applied for interim freezing orders against the DRC, Kamoto and Mutanda, as described below.

8. This appeal is not concerned with the question whether either application should be granted on its merits but with the correct procedures in Mauritius for consideration of such applications in support of international arbitration. As the Board will show, the proceedings have gone off the rails. Before doing so, the Board addresses the relevant legislation and legal authorities.

## **(2) Legal proceedings in Mauritius in support of international arbitration awards**

9. The Republic of Mauritius has legislated to support international commercial arbitration. It has ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 10 June 1958) ("the NYC"). Article III of the NYC provides: "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied on ...".

10. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act (Act 8 of 2001) ("the FAAA") provides in section 3(1) that "Notwithstanding any other enactment, the [NYC] shall have the effect of law in Mauritius." The NYC is accordingly part of the domestic law of Mauritius and can be enforced by the Supreme

Court. Section 4 of the FAAA provides that the Supreme Court has jurisdiction to entertain any application made under any provision of the NYC.

11. The International Arbitration Act (Act 37 of 2008) (“the IAA”) states in its long title that the Act is “To promote the use of Mauritius as a jurisdiction of choice in the field of international arbitration, to lay down rules applicable to such arbitrations and to provide for related matters”. Section 23 of the IAA provides:

“(1)(a) The Supreme Court shall have the same power to issue an interim measure in relation to arbitration proceedings as it has in relation to proceedings in Court, whether the juridical seat of the arbitration is in Mauritius or not, and whether that power is usually exercised by a Judge in Chambers or otherwise.

(b) In exercising a power referred to in paragraph (a), the Court shall have regard to the specific features of international arbitration.

(2) Unless the parties otherwise agree, the power referred to in subsection (1)(a) shall be exercised in accordance with subsections (2A) to (6).

(2A) The Court shall exercise the power referred to in subsection (1)(a) in such a manner as to support, and not to disrupt, the existing or contemplated arbitration proceedings.

(3) Where the case is one of urgency, the Court may, on the ex parte application of a party or proposed party to the arbitral proceedings, make such order as it thinks necessary.

(4) Where the case is not one of urgency, the Court shall act only on the application of a party to the arbitral proceedings made—

(a) on notice to the other parties and to the arbitral tribunal; and

(b) with the permission of the arbitral tribunal or the agreement in writing of the other parties.”

12. Section 42 of the IAA establishes who may exercise jurisdiction in relation to such applications:

“(1) Subject to subsection (1A), for the purposes of any application or transfer to the Supreme Court under this Act or of any other matter arising out of an arbitration subject to this Act before the Supreme Court, the Court shall be constituted by a panel of 3 Designated Judges, composed of such Designated Judges as the Chief Justice may determine.

(1A) Applications to the Supreme Court for interim measures under sections 6(2) and 23 shall in the first instance be made to, heard by and determined by a Judge in Chambers who shall be a Designated Judge, but shall be returnable before a panel of 3 Designated Judges, composed of the Designated Judge who initially heard the matter and of such 2 other Designated Judges as the Chief Justice may determine.

(1B) (a) Any hearing before the Supreme Court under this Act or the [FAAA] shall be held in public, save that the Court may, upon the application of a party, exclude from the proceedings persons other than the parties and their legal representatives where—

(i) all the parties so agree; or

(ii) the Court considers it to be necessary or expedient in circumstances where publicity would prejudice the interests of justice, taking into account the specific features of international arbitration ...

(b) Notwithstanding paragraph (a), the announcement of the decision of the Court shall be in public.

(1C) The Court may, on the application of one or all of the parties and where the interests of justice so require, prohibit the publication of all information relating to Court proceedings under this Act.”

Section 43 empowers the Chief Justice to nominate 6 Judges to serve as Designated Judges under the Act and the FAAA.

13. The Supreme Court also has a general power to grant injunctions under section 73 of the Courts Act 1945 (“the 1945 Act”) which provides:

“A Judge may, whether in term time or in vacation, grant an injunction subject to a motion to the Court to set aside the injunction, and the Court may then set aside or modify it.”

14. While it appears from its terms that section 73 of the 1945 Act gives the Supreme Court a broad power to grant injunctions, which by virtue of the NYC and sections 3 and 4 of the FAAA can be used to assist the enforcement of awards in international arbitrations, it has been the practice of the Supreme Court to use and adapt the power to issue interim measures in relation to arbitration proceedings to support the enforcement of awards in international arbitrations (see *VSoft Holding LLC v Peepul Capital Fund II LLC* 2017 SCJ 445 and *Arabov v Daleyot* 2020 SCJ 310).

15. The Supreme Court has adopted and applied the principles relating to freezing orders which were established by the courts of England and Wales in *Mareva Cia Naviera SA v International Bulk Carriers SA* [1975] 2 Lloyd’s Rep 509 and in later cases by granting injunctions to prevent a person from undermining the enforcement of a judgment or award against him or her by transferring or otherwise dissipating his or her assets. Examples of the Supreme Court doing so, to which the Appellant referred the Board, include *OCII – Ocean Indien Immobilier Ltd v Aury* 2013 SCJ 478, *Building and Engineering Co Ltd v Le Domaine des Alizées Ltée* 2016 SCJ 196, and *Appavoo v Buttie* 2016 SCJ 198. The Supreme Court will grant an application for a freezing order only if: (i) the applicant establishes a good arguable case against the respondent; (ii) there is a real risk that a judgment or award in favour of the applicant may go unsatisfied because the respondent will dissipate his or her assets or remove them from the jurisdiction; and (iii) in all the circumstances of the case it is just and convenient to grant such an order. For a modern discussion of the grounds for granting freezing orders see Steven Gee, *Commercial Injunctions*, 7<sup>th</sup> ed (2021) paras 12-032–12-051.

16. Section 42(1A) of the IAA (above) provides that such an application for an interim order be made to, heard and determined by, a Designated Judge in Chambers and that it is returnable before a panel of three Designated Judges. Therefore, if the Designated Judge in Chambers grants an ex parte interim measure such as an injunction, the application can thereafter be considered by a panel of three Designated Judges.

17. Also relevant to the interim measures which the Appellant seeks in this case is the procedure for attachment or saisie-arrêt. In the Seventh Title of Book Five of the Code de

Procédure Civile (“the Code”) entitled “Des Saisies-Arrêts ou Oppositions”, it is provided in articles 557 and 558:

“557. Tout créancier peut, en vertu de titres authentiques ou privés, saisir-arrêter entre les mains d’un tiers les sommes et effets appartenant à son débiteur, ou s’opposer à leur remise.

558. S’il n’y a pas de titre, le juge du domicile du débiteur, et même celui du domicile du tiers saisi, pourrant, sur requête, permettre la saisie-arrêt et opposition.”

18. The procedure for effecting an attachment is set out in the judgment of Glover SPJ in *The Mauritius Commercial Bank Ltd v P Sibartie Fils et Cie* 1988 MR 66; 1988 SCJ 110, and in the judgment of Lau Yuk Poon J in *Mauritius Duty Free Paradise Co Ltd v The Mauritius Commercial Bank Ltd and another* 2022 SCJ 42. If the creditor does not have an executory title, it must first apply ex parte to the Judge in Chambers for leave to attach the debt owing to the debtor and obtain an order before the usher can effect an attachment by serving an exploit (notice of attachment) forbidding the third party, or tiers saisi, from disposing of what he allegedly owes to the creditor’s debtor, or saisi, unless otherwise ordered by the judge. The ex parte application is dealt with by the Judge in Chambers without notice being given to the debtor or the third party. The second stage, which is directed against the debtor, involves two requirements which must be completed within eight days (or the longer period set out in article 563 of the Code where the debtor is domiciled at a distance from Mauritius) from the date on which the Judge in Chambers gives leave for the attachment of the debt in the hands of the tiers saisi. The two requirements are usually carried out together. First, the judge’s order must be served on the debtor. Secondly, the creditor applies by praecipe and affidavit to the Judge in Chambers for an order summoning the debtor to show cause why the instance en validité (the attachment procedure) should not be held good and valid, giving the debtor the opportunity to raise an objection de forme ou de fond. The third step is directed against the third party garnishee (the tiers saisi) and requires the creditor to inform the garnishee that such a request has been made to the judge. If the creditor has an executory title, it can ask the Judge in Chambers to summon the third party garnishee to declare what the garnishee owes to the debtor. If the creditor does not yet have an executory title, it must obtain a jugement en validité, which declares that its créance (claim) vis à vis the debtor is real, before the Judge in Chambers can summon the garnishee to make the declaration.

19. It is therefore clear that a creditor wishing to enforce an award in an international arbitration, whether it is seeking a freezing order or an attachment of a debt owed by a third party to its debtor under the award, is entitled, if it can establish the validity of its claim, to obtain an order of the court ex parte to secure assets against which to enforce its claim leaving the debtor or third party garnishee to challenge the interim measure.

20. The Supreme Court (International Arbitration Claims) Rules 2013 (“the 2013 Rules”) provide in rule 5 that an arbitration claim shall be started by motion. Rule 8 empowers the Chief Justice to grant leave to serve an arbitration claim motion and the evidence in support of it out of the jurisdiction in specified circumstances, which include a claim for an application under section 23 of the IAA or under the FAAA. Rule 15 provides that an application to recognise and enforce an international arbitral award is initially to be made by motion without notice to any respondent. After verifying compliance with the requirements of rule 15(3) (the written evidence which the applicant must provide), the Chief Justice issues a provisional order granting recognition of the award and authorising its enforcement: rule 15(5). Thereafter, rule 15 provides for the service of the enforcement claim motion and the provisional order on any respondent and enables a respondent to apply to set aside the provisional order.

21. For completeness, section 60 of the Courts (Civil Procedure) Act (Act 1 of 1856) (“the 1856 Act”) provides a procedure for claims against absent defendants in civil and commercial actions. Commercial actions are commenced in the Supreme Court by “the plaint with summons” (section 60(3)(b)) with service effected out of the jurisdiction with the permission of the Supreme Court. As explained below, the Board accepts the Appellant’s submission that it is not necessary for a creditor to initiate a commercial action by plaint with summons before seeking a freezing order or attachment in ex parte proceedings.

### **(3) The legal proceedings in this case**

22. The Appellant initially made an ex parte application under section 23(3) of the IAA for a freezing order on 9 February 2023 (SCR No 124115) accompanied by a witness statement from Timothy Lebrun, the Appellant’s agent. Mootoo J, Judge in Chambers, in an order dated 13 February 2023 declined to grant an interim order and ordered that a summons be issued calling on the respondents to appear before three Designated Judges to show cause why the injunctions should not be granted pending the enforcement of the arbitral awards. In response, on 17 February 2023, André Robert, attorney for the Appellant, wrote to the Supreme Court asking for the Appellant’s application to be withdrawn and reserving a right to make a fresh application and on the same day Mootoo J, Judge in Chambers, set aside the Appellant’s application at Mr Robert’s request.

23. On 3 August 2023 the Appellant applied to the Chief Justice for leave to serve an application for an interim measure in the form of a freezing order and ancillary relief under section 23(3) of the IAA on the DRC, Kamoto and Mutanda out of the jurisdiction. The application was numbered SCR No 124811. The Chief Justice granted leave by order dated 4 August 2023.

24. Thereafter, on 10 August 2023 the Appellant made its first ex parte application by praecipe for an attachment under articles 557–563 of the Code in process number SC/COM/JICA/000622/2023. But, after the Judge in Chambers observed that leave was required to effect service out of the jurisdiction before the application could be considered, Mr Robert wrote on the following day to withdraw that application and Goordyal-Chitto J, Judge in Chambers, set aside the application.

25. On 14 August 2023 the Appellant applied ex parte for a freezing order in process number SCR 124841 (5A/222/23). The application was accompanied by a witness statement of Timothy LeBrun in which he stated that Lakeside would give a cross-undertaking in damages and that Lakeside intended to apply to the Supreme Court for a provisional order for the recognition and enforcement of the arbitration awards under the FAAA and rule 15 of the 2013 Rules. The refusal of this application is one of the two subjects of this appeal to the Board. The Board refers to this application as “the Freezing Order Application”.

26. On the same day the Appellant made an ex parte application under section 60 of the 1856 Act (SC/COM/JICA/000637/2023) for leave to commence saisie-arrêt proceedings by way of praecipe and to serve those proceedings and any ensuing process out of the jurisdiction. By order dated 15 August 2023 Goordyal-Chitto J, Judge in Chambers, set aside that application on the ground that section 60 of the 1856 Act required the initial process to be before the Supreme Court by way of plaint with summons or declaration.

27. On 15 August 2023 the Appellant made a second ex parte application by praecipe to the Judge in Chambers for an attachment under articles 557–563 of the Code (SC/COM/JICA/0640/2023), the refusal of which is also the subject of this appeal to the Board. The Board refers to this application as “the Attachment Application”.

28. On the following day, Goordyal-Chitto J, Judge in Chambers, set aside the Attachment Application. The reasons given for this decision were (i) that leave was required for service against absent defendants outside Mauritius under section 60 of the 1856 Act, (ii) that the initial process had to be a plaint with summons or a declaration, and (iii) the similar application referred to in para 24 above had been made on 10 August and withdrawn on 11 August 2023.

29. Also, on 16 August 2023 Kwok Yin Siong Yen J, Judge in Chambers, set aside the Freezing Order Application. The order stated that the reason for setting aside the application was “in view of the ‘principe d’insaisissabilité des propriétés publiques’ and the fact that no injunction can be made in proceedings against the state”.

30. On 25 August 2023 the Appellant applied to the Court of Civil Appeal under section 6 of the Court of Civil Appeal Act and section 23(3) of the IAA renewing the Freezing Order Application (now process number SCR No 1798 (6B/55/2023)). By order of the same date the Court of Civil Appeal refused to grant ex parte a freezing order and directed that notice be served on the Respondents to appear at an inter partes hearing on 9 October 2023. No reasons were given for this decision.

31. Also, on 25 August 2023 the Appellant applied to the Court of Civil Appeal under section 6 of the Court of Civil Appeal Act and articles 557 to 563 of the Code renewing the Attachment Application (now process number SCR No 1799 (6B/56/2023)). On the same day the Court of Civil Appeal refused to grant ex parte attachment relief and directed that notice be served on the respondents to appear at an inter partes hearing on 9 October 2023. Again, no reasons were given for the decision.

32. The Appellant applied for conditional leave to appeal to the Board against the decisions in paras 30 and 31 above. The Court of Civil Appeal, by orders dated 4 September 2023, ordered that these matters be fixed for a hearing so that it could hear submissions of counsel. Thereafter, on 27 September 2023, the Court of Civil Appeal listed the hearing of the conditional leave applications on 23 October 2023.

33. Also on 27 September 2023 the Appellant applied to the Board for permission to appeal and submitted an urgent application for interim relief in the form of a stay of the Court of Civil Appeal's two orders in paras 30 and 31 above fixing an inter partes hearing for 9 October 2023. The Board (Lord Hodge, Lord Briggs and Lord Hamblen) by order dated 4 October 2023 granted special leave to appeal the 25 August 2023 orders on terms that (i) the 25 August orders be stayed pending determination by the Court of Appeal of the conditional leave applications, (ii) the hearing fixed for 9 October should not be published in any way or take place, and (iii) the hearing fixed for 23 October should take place as an ex parte hearing and should not be published in the cause list or in any other way. The Board gave as its reasons:

“(1) The applicant has an arguable case against the refusal of ex parte relief.

(2) There is a real risk that any relief sought would be ineffective unless the hearing in the Court of Appeal is conducted on an ex parte basis without publication of the hearing”

34. Thereafter the Court of Civil Appeal granted conditional leave to appeal and stayed the orders of 25 August 2023 pending the decision of the Board. On 22 January 2024 the Chief Justice granted final leave to appeal against the orders of 25 August 2023

in respect of both the renewed Freezing Order Application and the renewed Attachment Application.

#### **(4) Discussion**

35. The questions for the Board are whether the Mauritian courts erred in refusing the Appellant's ex parte applications for a freezing order and attachment on the grounds of (i) state immunity, (ii) the need to obtain leave to serve the proceedings out of the jurisdiction under section 60 of the 1856 Act and thereby give notice of the applications to the respondents, and (iii) the effect of the withdrawal of the prior application. The first ground was the reason why Kwok Yin Siong Yen J, Judge in Chambers, set aside the Freezing Order Application: para 29 above. The second and third grounds are the reasons why Goordyal-Chitto J, Judge in Chambers, set aside the Attachment Application: para 28 above.

36. On the matter of state immunity Mauritius is not a signatory of the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004. The law of Mauritius recognises the qualified immunity for foreign states which forms part of customary international law: *Jordan v Jordan* 2000 SCJ 57 and *First Global Funds PCC v Financial Services Commission of Mauritius* 2016 SCJ 14 ("*First Global*"). In *First Global* the Supreme Court, after referring to both English and French authorities, stated that in Mauritian law state immunity did not extend to the commercial activities of the state and that a state may waive its right to state immunity (see Fox and Webb, *The Law of State Immunity* 3<sup>rd</sup> edition (2013) p 373). It is possible to waive immunity from jurisdiction without waiving immunity from enforcement but it depends upon the terms of the contractual waiver whether the state has waived immunity from both. As the Board stated in *Katra Holdings v Standard Chartered Bank (Mauritius) Ltd* [2024] UKPC 8, para 35, Mauritius is a hybrid legal system which draws on both French law and English law. Under both English law and French law an express contractual waiver suffices to permit enforcement against a foreign state (see in French law *Republique du Congo v COMMISIMPEX* Cass 1<sup>re</sup> civ, 13 avr 2023, no F 18–20.915).

37. In this case the contractual clause referred to in para 2 above ("Les parties se conformeront à toute sentence arbitrale, et à ce titre, l'Etat renonce expressément à toute immunité de quelque nature que ce soit") is expressed in very broad terms. The Board notes the use of the words "l'Etat renonce expressément à toute immunité de quelque nature que ce soit". The normal meaning of those words and commercial common sense in the context of a commercial contract containing an arbitration clause, in which the state agrees to comply with an award, point towards a broad interpretation of the waiver. The Board does not need to decide the question of waiver before the respondents have an opportunity to challenge any grant of a freezing injunction (or attachment). But the Appellant has at least a good arguable case that the DRC has waived its entitlement to

state immunity. Accordingly, the Freezing Order Application should not have been rejected on this ground.

38. Turning to the Attachment Application, the Board is persuaded that the ground for refusal, that there must first be service against absent defendants and that the initial process must be a plaint with summons or a declaration, is misconceived. The purpose of the attachment is to secure the payment of sums due, in this case under an arbitral award, and the giving of notice to a debtor and/or an intended garnishee of an application for attachment would often defeat the purpose of the attachment. In *Seetaram v Ramdhony* 2022 SCJ 77 (“*Seetaram*”) Lau Yuk Poon J, Judge in Chambers, addressed an argument that an interim order in the nature of an injunction should not have been granted against an absent defendant outside the jurisdiction of Mauritius without initiating the proceedings by a plaint with summons or a declaration and obtaining permission of the Supreme Court under sections 60 to 62 of the 1856 Act. The Judge dismissed the argument emphatically and in the Board’s view correctly. She stated (on p 6 of her judgment):

“section 60 of the Courts (Civil Procedure) Act is not applicable to an application before the Judge in Chambers whereby an injunctive relief is being sought as it is only applicable for ‘*initial process*’ as defined in section 60(3) of the said Act. The application made in this case is *ex parte*, not of a declaratory nature but of an injunctive nature. The Judge in Chambers was called upon to decide if the prayers sought would be allowed or not or otherwise would a summons be issued to show cause why the order prayed for should not be allowed. The Judge in Chambers is therefore called upon to adjudicate on issues on an *ex parte* basis and should be Judge allow the order prayed for or instead allow a summons to be issued, [the] same need to be served or denounced on the other party without leave having been sought.”

In the Board’s view, the same reasoning applies *mutatis mutandis* to an *ex parte* application before a Judge in Chambers for an attachment. The Board observes that in *Supernova Investment Ltd v United Microelectronics Corp and others* 2023 SCJ 230, Goordyal-Chitto J applied the reasoning in *Seetaram* to an application by motion and affidavit to obtain an order of the court to complete the transfer of shares on a share purchase by ordering the registration of the purchaser as the shareholder and the issue of a share certificate in respect of the purchased shares.

39. If the Judge in Chambers has granted a freezing injunction and/or authorised the attachment of sums owed to the debtor on an *ex parte* application, the application and order could be served out of the jurisdiction together with the motion for recognition and

enforcement of the arbitral award (see rules 5 and 8(1)(b) of the 2013 Rules). The Appellant submits that the ex parte application and order could in the alternative be served pursuant to an inter partes motion to continue at the return date the relief that had been granted on an ex parte basis.

40. The second ground for the refusal of the Attachment Application (para 27 above) is equally without any substance. The fact that the application of 10 August 2023 for an attachment was withdrawn on the following day after the Judge in Chambers had mistakenly observed that leave was required to effect service out of the jurisdiction before the application could be considered was not a valid ground for refusing the Attachment Application on 16 August 2023. That withdrawal of the application and the earlier withdrawal of the application for a freezing order on 17 February 2023 (para 22 above) were made before the court had reached any decision on the merits of the applications and involved no abuse of process. In both cases the Appellant was understandably concerned that the Court was requiring that the applications be determined inter partes, which would have undermined their purpose of attempting to prevent the dissipation of the DRC's assets in the jurisdiction.

41. The Board concludes that the Judge in Chambers should have considered the Freezing Order Application and the Attachment Application on their merits. Failure to do so defeats the purpose of such ex parte applications which is to prevent the debtor under an arbitral award from removing from the jurisdiction or otherwise dissipating its assets to defeat the enforcement of the award. Those applications should now be considered on their merits on an ex parte basis without prior notification of the DRC or the intended garnishees.

42. As this matter has been heard ex parte, the Board's judgment is without prejudice to any arguments which a respondent may wish to make if the Judge in Chambers grants any of the relief which the Appellant seeks ex parte.

## **(5) Conclusion**

43. The Board allows the appeal and remits to the Judge in Chambers of the Commercial Division to determine the Freezing Order Application and the Attachment Application ex parte. The Board's decision on this appeal will not be published and must not be disclosed publicly until there is a final decision on the merits of the Freezing Order Application and the Attachment Application or unless the Board otherwise orders.