REPUBLIC OF MALAWI

IN THE SUPREME COURT OF APPEAL

MSCA MISC CIVIL APPLICATION NO. 31 OF 2023

BETWEEN:

PROJEX GROUP LIMITED……………………….……….……….................APPELLANT

-and-

CENTRAL EAST AFRICAN RAILWAYS LIMITED………...…………...RESPONDENT

CORAM: THE HON. MR JUSTICE FE KAPANDA SC, JA

Y. Mulemba and K. Soko, Counsel for the Appellant

P. Mpaka, Counsel for the Respondent

E. Minikwa, Court Clerk

Dates of Hearing: 8 January 2024

Date of Ruling: 14 March 2024

RULING

Kapanda SC, JA:

Introduction

Procedural Posture

5 On 15 November 2023, the Appellant submitted a legal claim, identified as Commercial Case No. 194, to the Respondent at the Commercial Division of the High Court in Blantyre. The claim seeks a comprehensive amount of $3,868,819.74, along with additional charges for interest, damages, and costs. These claims are based on the alleged violation of a written contract between the Appellant and the Respondent, which was entered into on 25 March 2021.

10 The contract, identified as EK 28 and presented to the Court by Mr. Eugene Khoriyo, is pertinent to the current application before this Court. In determining whether the Court has the authority or should intercede in the arbitration process by issuing an anti-arbitration injunction, clauses 18.2.1, 18.2.2, 18.2.6, and 26.1 of the Contract play an immediate and crucial role. These clauses are stated as follows:

15 Clause18.2.1.

All disputes that are not resolved by the Parties will be submitted to arbitration under this Clause.

Clause 18.2. 2

Any dispute relating to or arising out of or in connection with this Agreement including 20 any question regarding its existence, validity and termination shall be finally resolved by arbitration before a single arbitrator except if sub-clause 18.2.6 applies in accordance with English law or in the alternative by the Rules of the International Chamber of Commerce. The place of arbitration shall be London (if the rules of arbitration chosen by the Parties were ICC). The arbitration shall be conducted in the English language.

25 Clause 18.2.6

If the amount in dispute (exclusive of interest and costs) is $1 million or more, or unknown but reasonably anticipated to reach or exceed $1million or if another form relief is sought,

then the arbitration shall be conducted by a tribunal of 3 arbitrators, one of whom shall be chosen by the Company, one by the Contractor, and the third by the 2 so chosen.

Clause 26.1

Governing Law

5 This Agreement and any proceedings contemplated in Clause 18 shall be governed by, construed and applied in accordance with English Law.

Following several extensions, this agreement expired on 26 March 2023. The evidence confirming the extensions and the subsequent expiration of the contract is provided in Exhibit "BK 1," as stated in the affidavit of Bracious Kondowe.

10 It is important to highlight that there was never any hindrance to the arbitral process at any juncture. As demonstrated by Exhibit BK 2A to BK 7, the Appellant consistently emphasized, both during the parties' interactions and under oath in legal proceedings related to the matter, that any unresolved disputes between them would be subject to arbitration under Clause 18 of the Contract. However, in the Summons and Statement of Claim, the Appellant failed to make any reference to 15 the entire history, both judicial and extra-judicial, acknowledging the existence of the arbitration agreement. Considering this background, the Respondent applied to either dismiss or suspend proceedings in the Court below pending arbitration.

In response to the request for dismissal or a temporary halt to proceedings pending arbitration, the Appellant took various actions, including submitting an Injunction Application without notice (Ex-20 parte) before Justice Alide in Blantyre. On 13 December 2023, Justice Alide rejected the *Ex-parte* Injunction Application and instead instructed that the injunction request be presented with notice (Inter-partes) on an expedited timeline. Subsequently, when the case was brought before Justice Alide, he transferred it to Lilongwe, assigning Justice Namonde to handle it alongside the original case.

25 On 18 December 2023, an Ex-parte Application was filed by the Appellant before Justice Namonde. It is noted by this Court that another Ex-parte Application was presented before this Court on December 23, 2023. In this application, the Applicant failed to disclose to both the Court below and this Court that Justice Alide had previously rejected the Ex-parte application for

injunction and specifically directed that it be dealt with on a notice basis. Despite this, the Appellant proceeded Ex-parte both before Justice Namonde on 18 December 2023, and before this Court on 23 December 2023.

5 **The Appellant's case.**

Appellant's arguments in support of application for injunction are that the legal principle allows this Court to grant an injunction if there is a serious legal question, damages are insufficient, and justice or convenience favors it. The Appellant further contends that case management issue arises when parties engage in multiple adjudicative forums simultaneously.

10

Further, the Appellant argues that the Respondent's initiation of arbitration proceedings, while the court process is ongoing, creates a dual forum situation. Thus, the Appellant seeks an injunction to suspend arbitration until the local courts decide on the matter. The Court below rejected the request, citing the Appellant's alleged "dirty hands," a decision questioned as lacking evidence of
15 bad faith.

It is the contention of the Appellant' that its choice to file the case in Blantyre is legitimate based on factors like the parties' locations, witnesses, and evidence. Thus, the criticism by the Court below in the condemnation of the Appellant for exercising its rights and the finding of "unclean
20 hands" doctrine inappropriately applied. The Appellant adds that Respondent's conduct in filing arbitration proceedings without reporting to the Court was also overlooked by the Court below.

The Appellant continued to argue that questions of administration of justice should outweigh party conduct considerations. It is the further view of the Appellant that this Court has jurisdiction to
25 consider the application, relying on Rule 52.20 of the Civil Procedure Rules and Order 1 rule 18 of the Supreme Court of Appeal Rules. Further, the Appellant contends that the main concern of this Court should be the sound administration of justice, and that the Court should not be influenced solely by the conduct of the parties.

Further, the Appellant put in supplementary arguments which deal with the questions that were raised by this Court when the matter was called for an *inter-partes* hearing on 8 January 2024. The said question was whether this Court has jurisdiction to grant the relief that is being asked of it by the Appellant. In supplementary arguments, the Appellant also deals with other issues that were raised by the Respondent in the arguments that were filed and served. As this Court understands it, in sum, the following is what the Appellant submits in the supplementary arguments:

First, the Appellant acknowledges that the primary function of this Court is appellate in nature, though it possesses broader jurisdiction. It then referred to Section 104(1) of the Constitution and argues that this provision clarifies that the Supreme Court may have additional or original jurisdiction through other laws. Therefore, the Appellant continued, it is incorrect to assert that Order II Rule 1 of the Supreme Court of Appeal Rules contradicts Section 104 of the Constitution. It added that the Respondent's reliance on section 21 of the General Interpretation Act and the doctrine of constitutional avoidance is misguided. It is further submitted that this Court can avoid ruling on constitutional issues, when possible, but it is not mandatory.

Secondly, the Appellant is of the view that the argument against the validity of Order II Rule 1 of the Supreme Court of Appeal Rules is moot in the context of the matter before this Court, as the Appellant's application is related to or brought in the context of an appeal. It is further argued and submitted that the background of the case reveals that the Appellant initially sought an injunction in the High Court, and upon receiving an unfavourable decision, filed an appeal. The Appellant further argued that the Respondent initiated arbitration proceedings in London, prompting it to seek an injunction from the Supreme Court of Appeal. Thus, the Respondent's objections to the jurisdiction and application differences lack merit.

Thirdly, it has been submitted by the Appellant that the contention that material facts were suppressed lacks substantiation, as the Respondent failed to demonstrate how these facts would have altered this Court's decision. In the view of the Appellant the crucial matter at hand is whether it is permissible for the parties to engage in two forums for dispute resolution, given the pending issue in the High Court. Further, the Appellant contends that the Respondent has not adequately addressed the central issue of whether it is permissible for the parties to be engaged in two different forums for dispute resolution, emphasizing the need for clarity and consistency in legal proceedings.

Fourthly, the Appellant then argues that the dispute revolves around the interpretation of an arbitration clause and the Respondent's initiation of arbitration proceedings in London. It then makes references to legal principles, such as the doctrine of constitutional avoidance and the
5 jurisdiction of the Supreme Court of Appeal in granting interim relief like injunctions. The Appellant asserts that its application for an injunction is valid, as it is related to or brought in the context of an existing or contemplated appeal.

Counsel for the Appellant then addresses the Respondent's objections regarding the application's alleged differences between the Court below and this Court, arguing that Order I Rule 18 allows
10 for such applications to be made first to the Court below and then to this Court if refused.

The Appellant concludes by arguing and submitting that the lack of compelling arguments from the Respondent supports the sustenance of the injunction. It is therefore prayed by the Appellant that this Court should maintain the *ex parte* injunction with costs.

15 **The Respondent's arguments in opposition**

Counsel for the Respondent began by submitting that the 1994 Constitution of Malawi, specifically in section 13(1), mandates the State to actively promote the welfare and development of its people by adopting mechanisms such as negotiation, good offices, mediation, conciliation, and arbitration for settling differences. It added that this constitutional directive aligns with the modern procedural
20 codes, as emphasized by the courts which are directed to actively manage cases by promoting the use of alternative dispute resolution procedures when deemed appropriate, as stated in cases like Rolf Patel and Others v. Press Corporation[1]. It is the view of the Respondent that the application before this Court presents a perfect opportunity for the Court to clearly settle the modern-day relationship between litigation and alternative dispute resolution.

25 Respondent's Counsel then addressed the Court on the jurisdiction of the supreme court to entertain interlocutory applications. He argues thus: Firstly, that the authority for the court's jurisdiction in this case is derived from Order I, Rule 18 of the Supreme Court of Appeal Rules

[1] MSCA Civ. App. No. 26 of 2012

and according to this rule, when an application can be made to either the Court below or this Court, it must be initially submitted to the Court below. However, if the Court below rejects the application, the applicant has the right to bring it to this Court for consideration. It is the further view of the Respondent that the term "same application" in Order I, Rule 18 of the Supreme Court of Appeal Rules refers not only to the title but also encompasses the factual details, evidence, legal considerations, and materials presented in the Court below. This implies that this Court can reevaluate or rehear the application after it has been rejected by a High Court Judge in the Court below. The Respondent argues that the Supreme Court of Appeal, being a Court with constitutional jurisdiction to hear appeals from the High Court and other specified courts, primarily exercises its case management powers in anticipation of appeals. The authority for such management, according to Ordinance I, Rule 18, only comes into play when an appeal has been initiated. The Respondent points out that the Supreme Court does not exert control over High Court proceedings "until an appeal is entered," as stipulated in Ordinance III, Rule 19. Therefore, the Respondent contends that Order I, Rule 18's reference to concurrent jurisdiction over an application applies only in cases where the Supreme Court of Appeal's jurisdiction has been triggered by the initiation of an appeal.

Furthermore, the Respondent emphasizes that the term "appeal" is specifically defined in Rule 2 of the Supreme Court of Appeal Rules. Since there is no appeal against the Ruling of Justice Namonde issued on 22 December 2023, the Respondent asserts that her findings and determinations are conclusive and binding between the parties. In essence, the argument posits that without the activation of the Supreme Court's jurisdiction through an appeal, the High Court's ruling stands as final and non-reviewable.

The Respondent has brought to this Court's attention that the Appellants argue that the current issue revolves around case management and the administration of justice and that they request this Court to intervene by issuing an injunction to facilitate these aspects in the Court below. However, the Respondent asserts that established legal precedent dictates that the primary responsibility for striking a balance in case management lies with the initial judge. Citing the case of ***Powell v. Palliser of Hereford Ltd***[2], it is emphasized that appellate courts are generally hesitant to interfere

[2] [2002] EWCA Civ 959 [2002] All ER (D) 16

with case management decisions made at the lower court. This principle was underscored in ***Bazuka Mhango v. New Building Society Bank Limited***[3].

In essence, the Respondent concludes that, based on these three points above, the jurisdiction of
5 the Supreme Court has not been activated to entertain the Appellants' application for an injunction. Since the denial of the application by Justice Namonde in the Court below, the Supreme Court should not be inclined to intervene in the absence of triggered jurisdiction. The Appellants urges for the dismissal of the application.

10 The Respondent also addressed this Court on *ex-parte* orders pending proceedings and the duty of full and frank disclosure and the implications of its violation. The argument presented is centred around Projex Group Limited's *ex-parte* application for an injunction, emphasizing that the applicant has failed to meet the required standard of candour, which, according to established law (referencing ***NICO Asset Managers Limited v. Alliance Capital and Another v. Smile Life***
15 ***Insurance Limited and Others***)[4], may lead to the setting aside of the ex-parte order. It was argued by the Respondent thus:
Firstly, Projex Group Limited is accused of breaching its duty of full disclosure by failing to inform the court, both in the current proceedings and those before Alide J, that a direction for notice presentation had been given. The Respondent contends that Projex Group proceeded ex-parte
20 without revealing Justice Alide's order, effectively disobeying it, and seeking equitable relief simultaneously, which is improper and contradictory.

Secondly, the applicant is accused of selectively presenting evidence before this Court, specifically by excluding exhibits and pieces of evidence related to affidavits submitted before Justice Alide
25 in the Court below. This selective presentation is characterized as an attempt to manipulate the Court's perception and deny it the full and fair information required for a balanced decision.

In conclusion, the Respondent urges this Court to find Projex Group guilty of breaching its duty of full and frank disclosure in both instances before this Court and the Court below. Based on this

[3]MSCA Civil Appeal No. 50 of 2015
[4] Com. Cause No. 83 of 2022

alleged breach, the request is made to set aside the ex-parte order issued on 27 December 2023, and dismiss the pending *inter-parte* application.

Further, the Respondent argued and submitted on the contents of an affidavit in an application
5 before a court of law. It is submitted and argued as follows:

That the court's role is to decide cases based on facts and law, relying on evidence presented by litigants. It is argued on behalf of the Respondent that the Appellant, in pursuing the relief of injunction, deviated from established rules for presenting affidavit evidence. Further, the
10 Respondent submits that Mr. Eugene Khoriyo, the deponent, adopted a rough and misleading approach, offering opinions and arguments instead of presenting facts, contrary to the duty of a deponent as espoused in ***R v. Administrator General and Another ex parte Estere Chunga and Another*** [5]. Thus, Mr. Eugene Khoriyo's opinions in support of the *ex-parte* application, claiming the Respondent's actions were irregular and an attempt to cause confusion, lack a factual basis. It
15 is contended that these opinions enabled the Applicant to obtain the injunction, but they should be struck off as they lack cogent evidence.

The Respondent further put it in argument that, contrary to the Applicant's claims, there was no legal impediment to arbitration; in fact, pursuing agreed dispute resolution mechanisms promptly
20 makes business sense. It added that the Respondent's commitment to the arbitration agreement should not be misconstrued as improper, and the *ex-parte* order of injunction should not be sustained without a factual basis.

Further, the Respondent raises an issue as regards whether the Court should at all restrain
25 arbitration. It further submits that the consistent application of legal principles is essential for establishing a credible legal system, particularly when seeking to attract serious international private investment. Thus, this Court now has a crucial opportunity to establish a clear standard for the relationship between agreed commercial Alternative Dispute Resolution (ADR) mechanisms and litigation in Malawi.

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[5] JR Cause No. 28 of 2022)

Furthermore, the Respondent argues and submits that in any application for an interim injunction, the pivotal question is whether there is a serious issue to be tried. If not, the application fails at the outset. The Applicant must establish entitlement to the right they seek to protect, and failure to do so results in the automatic dismissal of the interlocutory injunction claim. Furthermore, the applicant must demonstrate that, based on facts and relevant law, they would be entitled to a permanent injunction at trial. It is the view of the Respondent that applying these principles to the present case, the parties cannot deviate from the agreed-upon arbitration agreement. The Respondent then calls on this Court, guided by legal precedent, not to interfere with these principles unless there is a clear entitlement to an injunction. The Respondent adds that the Court should adhere to established legal principles, respect the parties' autonomy, and decline the Applicant's request for an injunction against arbitration.

Finally, the Respondent argues and submits that vexatious, frivolous and court abusive process cannot be a basis for interim injunction. The Respondent's arguments are as follows:

It is argued and submitted that this Court's duty to prevent the misuse of its machinery, is central to the current proceedings. Therefore, Projex Group Limited's conduct, marked by multiple proceedings and an attempt to revisit matters already decided, constitutes an abuse of the court process. The Respondent adds that it is undoubtedly, frivolous, and vexatious for Projex Group Limited to initiate various proceedings or reopen questions already settled by a competent court. Thus, the attempt to secure an injunction is plainly an effort to reject a pre-existing agreement under the guise of court approval or to perpetuate an abuse of the court process. It is the view of the Respondent that this Court, informed by the overriding objective and its inherent jurisdiction to administer justice, is empowered to strike out processes deemed as res judicata, frivolous, vexatious, or an abuse of the court process.

In sum, the Respondent contends that the order of this Court of 27 December 2023, should be set aside on the ground of it being an abuse of court process, a vexatious proceeding, and a frivolous claim. The Respondent further submits that such a proceeding lacks merit and is not deserving of any equitable relief.

ISSUES FOR DETERMINATION

What issues emerge and need resolution in the case currently being reviewed by this Court? From the Court's perspective, this case presents several issues, with the primary focus being on the injunction that the Court will ultimately need to address. Essentially, the parties are keen on having the Court decide the various issues outlined below:

a. whether or not the Supreme Court has jurisdiction to entertain interlocutory applications;
b. whether or not on *ex-parte* Orders pending proceedings there is a duty of full and frank disclosure and what are the implications of its violation;
c. what should the contents of an affidavit be in an application before a court of law;
d. whether or not the Court can generally issue an anti-arbitration injunction;
e. Put differently, should the Court at all restrain arbitration; whether the Appellant's applications are vexatious, frivolous and an abusive of court process; and
f. whether the interim interlocutory injunction granted to the Appellant on 27 December 2023 ought to be vacated.

Following the identification of the issues isolated for determination in this ruling, the subsequent analysis will delve into a thorough examination of legal precedents, relevant statutes, and compelling arguments presented by both parties. This comprehensive exploration aims to establish a well-grounded and justifiable basis for the court's final decision on the matter at hand.

LAW AND DISCUSSION (ANALYSIS OF THE LAW AND DETERMINATION)

THE LAW

This Court's interpretation of the law is that, in accordance with section 13(1) of the 1994 Constitution, the State (which includes the judiciary) is directed to actively promote the welfare and development of the people of Malawi by adopting mechanisms for settling differences through negotiation, good offices, mediation, conciliation, and arbitration. The Court aligns its objectives with this constitutional directive, as outlined in modern procedural codes, mandating the active

management of cases. This involves encouraging cooperation among parties, promoting the utilization of alternative dispute resolution procedures when deemed appropriate, and facilitating their implementation. This understanding is reflected in the case of ***Rolf Patel and Others v. Press Corporation and Another***[6] Hence, the current case before this Court provides an ideal occasion, following the precedent of ***NICO v. Ngwira***[7], a decision predating the 1994 Constitution. It offers an opportune moment for the Supreme Court to definitively establish the contemporary connection between litigation and alternative dispute resolution.

The Court observes that there are fundamental questions that have arisen in the present case viz.: when, as is evident in this case, business individuals have voluntarily agreed to resolve their disputes through arbitration to enhance the effectiveness and efficiency of their transactions, should the Courts in Malawi readily intervene with injunctions against the arbitration process? Further, considering the strides made by the Courts in Malawi in guiding the business community and Commercial Courts, as exemplified in the case of ***NBS v. Henry Mumba***[8], in delineating the boundaries and appropriate use of injunctive relief, what guiding principle should inform judicial decision-making when interpreting arbitration clauses? Particularly, in situations where one party to an arbitration agreement seeks to obstruct, even temporarily, the utilization of the agreed-upon arbitral mechanism established at the time of contracting, is the Malawi Court justified in intervening with any form of anti-arbitration injunction?

The Court observes that resolving any uncertainties is crucial at this timely juncture, as unsettled legal principles in commerce can be highly detrimental to legitimate commercial expectations and can impede the national development of a people. This sentiment, which is adopted by this Court as its own, is echoed by Justice Chandrachud in ***Ayysamy v. Parasivam and Others***[9].

As regards the question whether the Supreme Court of Appeal has jurisdiction of to entertain interlocutory applications, this Court makes the following findings and conclusions:

This Court, firstly observes that, as highlighted in the Appellant's Skeleton Argument, the present application is founded on the provisions of Ord. I r.18 of the Supreme Court of Appeal Rules. This

[6] (MSCA Civ. App. No. 26 of 2012.
[7] [1993] 16(1) MLR 381
[8] [2001-2007] MLR(Com) 243
[9] Civ. App. No. 8245-8246 (Supreme Court of India).

rule stipulates that when an application can be made to either the Court below or to this Court, it should initially be presented to the Court below. If the Court below rejects the application, the applicant is then entitled to have it determined by the Supreme Court. It is crucial to emphasize that the same application refused in the Court below must be brought to this Court for
5 reconsideration or rehearing. The term "same application" refers not only to the title but encompasses the same facts, evidence, legal considerations, and material presented in the Court below. Interpreting Ord. I r. 18 of the Supreme Court of Appeal Rules differently would risk inundating this Court with fresh applications disguised as those made in the Court below, leading to conflicting pronouncements on case management matters. First, the authority of this Court over
10 the application is drawn from Order I rule18 of the Supreme Court of Appeal Rules. With the key words relevant to the present application underlined, Order I rule 18 reads as follows:

> Whenever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below but, <u>if the Court below refuses the application,</u>
15 <u>the applicant shall be entitled to have the application determined by the Court.</u>

It is the same application that was refused in the Court below that is supposed to be brought before this Court for re-consideration or re-hearing. Same application means the same material constituting "the application" in the Court below. It is not simply the title of the application-it is
20 the facts and evidence, the legal considerations and the material that were presented in the Court below over which the applicant shall be entitled to have the application determined by a Supreme Court Justice of Appeal after a High Court Judge has refused the application. Thus, interpreting Ord. 1 r. 18 otherwise than that, the Supreme Court will be inundated with fresh applications disguised as applications made in the Court below and the Judiciary will risk continuously making
25 conflicting pronouncements on case management matters that are supposed to be covered by settled law.

Further, it is well to put it here that where an order contrary to that made in the Court below is to be made it would also be unfair and discouraging of the Court below for the Supreme Court to
30 pronounce itself and perhaps make adverse remarks concerning a High Court Judge on material

not presented in or considered by the Court below or over which the Judge has had no opportunity to pronounce himself or herself.

It would be contrary to judicial comity to make the Supreme Court Justices of Appeal appear to be constantly meddling in the management of cases in the Court below when the truth would be that the two tiers of the Court are considering different materials due to non-compliance by an Applicant with the text and intent of Ord. I r.18 of the Rules of this Court in failing to bring "the application" that was before the Court below. The very integrity of the Judiciary as an institution falls to be undermined if, on account of Ord. 1 r. 18, the Supreme Court were to entertain fresh applications and factual or legal material over which the Court below has had no say or no opportunity to say something. All that would be contrary to the principles articulated and settled in ***Bazuka Mhango v. New Building Society Bank Limited*** [10] on the need to have the application dealt with first in the Court below first.

Secondly, this Court is a Supreme Court of Appeal. Its constitutional jurisdiction is "to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe". Its case management powers relate to managing a case in contemplation of an appeal that may fall to be dealt with by the full Court. But for the due application of Ord. I r. 18 this Court does not have control over proceedings in the High Court "until an appeal is entered" as provided for under Ord. III r. 19 of the Supreme Court of Appeal Rules.

Therefore, when Ord. I r.18 of the Supreme Court of Appeal Rules talks about concurrency of jurisdiction over an application, it can only be in cases where the Supreme Court jurisdiction has also been ignited by an appeal. An appeal is defined in Rule 2 of the Supreme Court of Appeal Rules. There is no appeal of any kind against the Ruling of the Court below. Therefore, the findings and determination of the Court below are crystallised and binding as between the parties. Further, it is well to put it here that the Supreme Court jurisdiction has not been triggered.

Thirdly, this Court finds and concludes that despite the Appellant's assertion that the issue revolves around case management and justice administration, settled law dictates that the primary

[10] MSCA Civil Appeal No. 50 of 2015

responsibility to strike a balance lies with the first instance Judge. Appellate Courts are generally reluctant to interfere with case management decisions made by the Court below, as emphasized in ***Powell v. Palliser of Hereford Ltd***. *(supra)* and echoed in ***Bazuka Mhango v. New Building Society Bank Limited*** *(supra)*.

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By reason of the above, this Court finds and concludes that its jurisdiction has not been triggered for it to entertain the Applicant's application for an injunction following its denial by Namonde J. Therefore, the application should be dismissed.

10 The Court is currently tasked with addressing the issue whether there is an obligation for complete and open disclosure in *ex-parte* orders during ongoing proceedings, and what consequences may arise if this obligation is breached.

The general principle is that parties and their legal representatives have a duty to disclose all 15 relevant information to the court, even in *ex-parte* applications.

It is commonplace that *Ex-parte* orders are granted by a court without the opposing party being present or given an opportunity to be heard. Thus, despite the absence of the opposing party, the party seeking the ex-parte order is typically required to make a full and frank disclosure of all 20 material facts to the court. This duty is essential for maintaining the integrity of the legal process and ensuring that the court has all relevant information before making a decision. There are serious consequences for breaching the obligation of complete and open disclosure in ex-parte orders. These may include:

25 First, setting aside the order: if it is later discovered that the party seeking the ex-parte order failed to disclose material facts or misled the court, the order may be set aside or overturned.

Secondly, it is well to note that knowingly providing false or incomplete information to the court can be considered contempt of court, which may lead to sanctions or penalties against the 30 responsible party.

Thirdly, the party that breaches the duty of disclosure may be required to pay the legal costs incurred by the other party because of the incomplete or misleading information.

Fourthly, in some cases, the party that suffered harm due to the incomplete disclosure may be
5 entitled to seek damages for any losses incurred.

It is therefore crucial for parties involved in legal proceedings to adhere to ethical and legal obligations regarding disclosure. Failing to do so not only undermines the fairness of the legal process but can also result in serious consequences for the party responsible for the breach.

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It is the view of this Court that Projex Group Limited approached it on an ex-parte basis, successfully securing an injunction. However, in the process, Projex Group Limited assumed an additional and more significant obligation of transparency. Therefore, at law any violation of this obligation renders it ineligible for an extension or continuation of the *ex-parte* order granted on 27
15 December 2023.

The legal position is firmly established. In essence, the law dictates that if this Court determines that there was a significant omission of relevant information, intentional concealment of material facts, or a failure to present the facts fully and fairly by the applicant, then the Court is enjoined to
20 nullify any actions taken based on the incomplete presentation of facts. What then obtains in this matter? This Court determines and reaches the following conclusions:

Firstly, throughout the relevant periods, it was well within the knowledge of the Applicant that Justice Alide had explicitly directed that the application for injunction be presented with notice.
25 Despite this directive, both in this instance and in the Court below, the Applicant proceeded *ex-parte* without disclosing or acknowledging Justice Alide's directive. In essence, Projex Group ignored Justice Alide's order and direction issued on 13 December 2023, and failed to communicate this fact when presenting *the ex-parte* application for injunction to Justices Namonde and this Court. The principle established in the case of ***State and 5 others; Ex parte: Right Hon***

Dr Chilumpha[11] , which this Court agrees with, emphasizes the inconsistency of disregarding court orders while simultaneously seeking equitable relief from the same court[12].

Secondly, it is well to note that in the application filed with this Court on 23 December 2023, Projex Group Limited, as an *ex-parte* Applicant, submitted the affidavits of Bracious Kondowe (exhibited as EK 24 and EK 25), previously presented before Justice Alide in the Court below regarding the application to stay and strike out the Blantyre proceedings. Notably, the Applicant deliberately omitted all exhibits and pieces of evidence accompanying those Sworn Statements, as well as the Respondent's legal arguments concerning the injunction. This strategic omission deprived this Court of comprehensive and unbiased information, favouring the Applicant's own version outlined in paragraphs 2.9, 2.10, and 2.11 of Mr. Eugene Khoriyo's affidavit seeking an *ex-parte* order of injunction. This crafty manoeuvre resulted in this Court being denied a complete understanding of the matter.

In sum, this Court finds and concludes that the Applicant has violated its duty of full and frank disclosure as *an ex-parte* Applicant before this Court on 23 December 2023, and before the Court below on 18 December 2023. Based on this finding, this Court will set aside the order it issued on 27 December 2023, and without further delay dismiss the *inter-parte* application associated with it.

Legal decisions are made by courts by considering both factual evidence and applicable laws. While courts serve as guardians of the law, they rely on litigants to present relevant facts through evidence. One matter that has surfaced and requires resolution pertains to the contents found in an affidavit. What should be included in an affidavit submitted in a legal court application?

The Applicant, by opting for a different application than the one presented before Justice Namonde, submitted an affidavit by Mr. Eugene Khoriyo intending to present the injunction facts from the Applicant's perspective. It is well to put it here that affidavits are typically filed by individuals who may provide evidence to help resolve issues in accordance with the court's

[11] [2006] MLR 433

[12] See also Baptist Holdings Ltd v J Suzi-Banda SCA Miscellaneous Civil Appeal Number 39 of 2023 (unreported)

constitutional duty. However, in the pursuit of obtaining relief, the Applicant violated basic and essential rules governing the submission of affidavit evidence. Mr. Khoriyo adopted a rough and misleading approach filled with conjecture. It is observed that the Appellant proceeded to put matters of opinion and law in an affidavit. According to established legal principles, a deponent is
5 not allowed to present opinions and arguments as evidence; their duty is solely to present facts. This Court would like to remind litigants that supporting affidavits must comply with three "musts" — they must be based on personal knowledge, they must contain facts as would be admissible in evidence, and they must demonstrate the deponent's competency to testify to the matters stated. And, just as at trial, a factual predicate for the deponent's testimony is required. As
10 it were, affidavits are written in the first person; that is, you tell your story as if you were narrating it or giving it in a courtroom. They are also generally confined to personal knowledge. An affidavit is not a kind of superior evidence. It is simply a written statement on oath. It must be factual and free from extraneous matters such as hearsay, legal arguments, objections, prayers, and conclusions. Further, an affidavit should state facts, and facts in this Court's view, do not include
15 controverted evidence[13].

This Court finds and concludes that, contrary to the Applicant's claims, there was no legal impediment to arbitration. On the contrary, it made business sense to pursue the agreed-upon dispute resolution mechanism promptly. Exhibit BK 2-7 demonstrated the commitment of both
20 parties to arbitration following unsuccessful negotiations in BK 4. The comprehensive Request for Arbitration in BK 5 represented a logical continuation of work initiated after the breakdown of negotiations between the parties in October, as indicated by the Respondent's letter in BK 4. Projex Group Limited, in its letter dated 1 April 2023, in BK 4, also expressed the right to proceed to arbitration if no resolution was reached during a specified period.

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In support of the *ex-parte* application, Mr. Eugene Khoriyo, in his affidavit, expressed shock and disapproval of the Respondent's actions, characterizing them as irregular and an attempt to create confusion by having the dispute in two forums. This opinion led to the issuance of the injunction

[13] The State v The Inspector-General of Police The Attorney General and A.J. (A Minor) Ex-Parte Standford Siliro Shaba on behalf of T.S. (Minor) Miscellaneous Civil Appeal No. 5 of 2022 SCA (unreported); See also R v. Administrator General and Another ex. parte Estere Chunga and Another JR Cause No. 28 of 2022 (unreported)

herein. However, it is inappropriate and improper conjecture before a court of law, reflecting a pattern from the Applicant that obscures the facts. This unsupported opinion allowed the Applicant to secure the *ex-parte* injunction. This Court finds that these parts should be struck off, as they lack cogent evidence to support the application. Thus, there is no factual basis for sustaining or
5 continuing the *ex-parte* order. The affidavit is accordingly struck off.

As previously mentioned, the court observed that the applicant objected to the respondent initiating arbitration proceedings. Consequently, the applicant sought an injunction to prevent the arbitration from proceeding. The key question that arises is whether the court has the authority to issue a
10 general injunction against arbitration. In other words, should the Court intervene to restrain arbitration in any circumstances? This Court has therefore to consider is whether, having heard the parties in the *inter parte* application, the order of interim interlocutory injunction must be vacated.

This Court is cognizant of the relevant legal principles governing interim interlocutory injunctions.
15 An interim injunction will be granted if the applicant presents a plausible claim to the right they seek to safeguard. The courts refrain from resolving issues based solely on sworn statements, focusing instead on whether the claimant demonstrates a substantial question to be addressed at trial.

20 The initial matter to be addressed is whether there are significant or arguable issues requiring determination in a full trial. This is particularly relevant as interlocutory injunctions typically aim to maintain the status quo until the parties' rights are conclusively determined. Additionally, the Courts acknowledge parties' freedom to choose dispute resolution methods but emphasize that court intervention should ensure a fair and impartial dispute resolution, respecting party autonomy
25 while avoiding undue delay and expenses in arbitration.

The pivotal question now is whether this Court should lift the *ex parte* interlocutory injunction, as argued by the Respondent, or uphold it, as argued by the Appellant. The Court aims to explore the legal stance on stay of proceedings or injunctive relief in the presence of an arbitration agreement.
30 Courts may have the authority to stay judicial proceedings when there is a valid and enforceable arbitration agreement between the parties, or the Courts may stay proceedings to allow the arbitral

tribunal to determine its jurisdiction. As a fundamental principle and the standard course of action, the stay of proceedings permits the parties to opt for arbitration over litigation, in accordance with their agreement. The purpose of staying proceedings is to enable the parties to engage in arbitration, consistent with their agreement, rather than to prevent the arbitration process from
5 taking place. Further, there may be limited circumstances in which a court may refuse to stay proceedings despite the existence of an arbitration agreement. For example, if the arbitration agreement is found to be null and void, or if it is incapable of being performed, a court may not grant a stay.

10 The Court will now examine whether the Court should intervene in the parties' agreement and order a stay of proceedings or issue an injunction.

In the English case of ***Coppée-Lavalin S.A./N.V. v. Ken-Ren Chemicals and Fer-tilizers Ltd***.[14], the House of Lords differentiated between court interventions in arbitration. Procedural steps, such
15 as staying legal proceedings initiated in violation of the arbitration agreement, maintaining the status quo through interim injunctions, and facilitating award enforcement or challenge, represent varying degrees of interference with arbitral proceedings and party autonomy. The court emphasizes the need for minimal intrusion, intervening only, when necessary, as underscored in the Kenyan case of ***Epco Builders Limited v Adam S. Marjan-Arbitrator & Another***[15]. Courts
20 generally resist staying proceedings or granting injunctive relief when an arbitration agreement is in place. The Court elucidates that a stay of proceedings requires an aggrieved party to pursue their claim through arbitration, aligning with the contractual nature of arbitration agreements.
As will be seen from the ***Epco Builders Limited (supra)*** case, the Courts loathe the staying of proceedings or issuance of injunctive relief where there is an arbitration agreement or clause
25 entered by parties. Further, as this Court understands it, an order for stay of proceedings has the effect that if an aggrieved party desires to pursue a claim, the party can only do so by arbitration. As it were, the reasoning behind this is that agreements to refer disputes to arbitration are mainly a contractual undertaking by parties to settle disputes out of the court. Thus, the courts will only

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[14] [1994] 2 All ER 465
[15] Civil Appeal No. 248 of 2005 High Court (Constitutional Court) of Kenya. Civil Appeal No. 248 of 2005 High Court (Constitutional Court) of Kenya http://www.kenyalaw.org/kl/index.php?id=1923.

intervene to enforce and give force of law what parties, exercising their freedom to contract, choose to agree to be bound by.

Further, it is well to note that the necessity of stay of proceedings arises where the parties have a valid arbitration agreement and upon a dispute arising on a matter covered by the same, one party goes to the court in breach of the arbitration agreement. Thus, an arbitration clause or arbitration agreement in a contract is not an impediment to resolving disputes in court until a party objects. As it were, an arbitration agreement does not limit or oust the jurisdiction of the court to grant reliefs sought by way of an action[16]. Put differently, the parties can choose to ignore the arbitration agreement and file the proceedings in a court. However, as this Court understands it, where one of the parties is desirous of effectuating the arbitration agreement when the other has gone to court, then the former party may seek an order of the court staying the court proceedings[17]. It is the further understanding of this Court that the grant of the order of stay of legal proceedings leaves the initiator of the court proceedings with no option but to follow the provisions of the arbitration agreement if he wishes the dispute to be resolved. Before granting stay of proceedings, it is advisable for the courts to have to, inter alia, the following conditions: The applicant must prove the existence of an arbitration agreement which is valid and enforceable. The rationale here is that to stay proceeding where there is no valid Arbitration Agreement would otherwise amount to driving the claimant to the seat of justice as s/he cannot get redress by enforcing the arbitration agreement. The doctrine of separability is important as it enables the arbitration clause to survive the termination by breach of any contract. The arbitration agreement survives even where the underlying contract is void as the parties are presumed to have intended their disputes to be resolved by arbitration.

It is crucial to note that the need for a stay of proceedings arises when parties have a valid arbitration agreement, and one party breaches the agreement by resorting to court for a dispute falling within the arbitration scope. The court underscores that an arbitration agreement does not restrict the court's jurisdiction to grant remedies through legal action; however, parties can choose

[16] Rawal v The Mombasa Hardware Ltd [1968] E.A. 398; see also Peter Muema Kahoro & Another v Benson Maina Githethuki [2006] HCCC (Nairobi) No. 1295 of 2005

[17] Section 6 of the Arbitration Act Cap 6:03 of the Laws of Malawi

to ignore the arbitration agreement and file court proceedings. When a party wishes to enforce the arbitration agreement despite the other party's court action, the former may seek a court order for a stay of legal proceedings. Such an order compels the initiator of court proceedings to adhere to the arbitration agreement for dispute resolution. Before granting a stay of proceedings, the court advises considering conditions such as the applicant proving the existence of a valid and enforceable arbitration agreement, with the doctrine of separability ensuring the survival of the arbitration clause even if the underlying contract is void.

As previously stated, this case offers a rare opportunity for this Court to establish a legal precedent on arbitration versus litigation. Consistency is crucial for our jurisdiction, especially if we aim to be viewed seriously as a destination for significant international private investment. We cannot advocate for Alternative Dispute Resolution (ADR) on a constitutional and legal policy level and then lean towards litigation when the chance to implement ADR arises. This Court now has the chance to clarify the Malawi standard regarding the relationship between agreed-upon commercial ADR and litigation in our Courts. Nothing undermines legitimate commercial expectations more than an unsettled and inconsistent legal framework[18] .

In any application for an interim injunction, the primary consideration for the court has always been whether there is a serious issue to be tried. If the answer is no, the application fails at the outset. Establishing entitlement to the right being sought for protection is of fundamental importance. Failure to do so results in the automatic dismissal of the claim for an interlocutory injunction. Once the applicant fails to present a good arguable claim to the right, the court need not consider other criteria. This principle, as articulated in ***Joyce Mlotha v. New Building Society***[19], emphasizes that the applicant must raise a triable issue and convince the court that, at the end of the trial, an injunction could be granted. If the court would not grant an injunction at trial, then an interlocutory injunction should not be granted either.

[18] Chandrachud, J in Ayysamy v. Parasivam and Others Civ. App. No. 8245-8246, (Supreme Court of India).
[19] Civil Cause number 2539 of 2000 (HC)(PR) (unrep.) p.6

Applying these foundational principles to the current case, the parties cannot deviate from the arbitration agreement they willingly entered. Under Malawi law, Courts will not interfere[20]. It is well to note that the statement of claim in Commercial Cause No 194 of 2023 before the Court below does not include a claim for an injunction against arbitration. On the contrary, the Appellant has been proceeding on the basis of arbitration in Commercial Cause No. 60 of 2023 since 24 March 2023, and has even obtained an order to proceed to arbitration in line with clause 8.1 and 8.2. Despite this, the Appellant has not challenged the order it obtained to proceed to arbitration.

Even if, for argument's sake, the High Court does not refer the matter to arbitration after hearing the application for a stay, there is no way a Court will grant an injunction to prevent arbitration based on the pleadings in the merged cases. According to the case of ***Joyce Mlotha v. New Building Society*** (supra), no interim order can be issued. Mr. Eugene Khoriyo's Sworn Statement expresses a complaint that following the terms of the arbitration agreement signed by Projex Group Ltd is painful and inconvenient. However, in ***First Merchant Bank Limited v Mkaka & Ors.***[21], this Court emphasized that agreements must be upheld, even if they become burdensome. The agreement to arbitrate is a settled fact, as is the judicial direction to arbitrate.

The suggestion by the Appellant of a possibility of contradictory decisions if arbitration proceedings are allowed is unfounded and cannot be a basis for an injunction. Instead, it is a compelling reason to let the parties abide by their agreement, which is to proceed with arbitration. Clause 11 in the agreement reveals that this was a $28,659,434.08 contract. The current total claims in the arbitral proceedings by the Appellant stand at $8,386,832.59, with the Appellant's claim in this case at $3,868,819.74. These substantial amounts were well known to the parties, who, despite being aware of the risks, expressly decided to resolve any disputes through arbitration, as outlined in their agreement.

The law in Malawi and beyond places significant importance on agreements, with a constitutional basis supporting the inviolability of agreements. All laws enforced and applied by the Courts derive their force from the Constitution, making it subject to constitutional control. The Bill of

[20] NBS v. Henry Mumba [2001-2007] MLR(Com) 243
[21] (Civil Appeal 53 of 2013) [2014] MWSC 1 (10 October 2014)

Rights applies to all law, binding the judiciary to promote the spirit, purport, and objects of the Bill of Rights and the fundamental principles and values of the Constitution. While the Courts in Malawi recognize the fraud exception, agreements may not be enforced if their objectives violate public policy.

5

The jurisprudence of Malawi Courts establishes that 'public policy' is rooted in the Constitution and its fundamental values. These values, including human dignity, equality, and freedom, require the Courts to approach their task of striking down contracts or declining to enforce them with perceptive restraint. Contractual autonomy, an integral part of freedom, aligns with the
10 constitutional value of dignity.

It must be put here that contractual freedom is constitutionally protected against arbitrary state abridgment. This constitutional approach in Malawi, reflected in statutes and binding case law, directs Courts and tribunals to respect agreements made by individuals with legal capacity. This
15 Court should consistently promote party autonomy and refrain from issuing injunctions during the enforcement of contracts, emphasizing the importance of commercial justice. Further, the Court defers to the parties' agreement to arbitrate and avoids intervening unless fraud or arbitrator impartiality is established[22]. The parties' agreement, stating that the understanding and application of clause 18 must be guided by English law, suggests that convenience would be best served in an
20 English forum. The Court cannot intervene with an injunction against arbitration, especially when the agreement explicitly provides for arbitration to resolve any dispute.

In sum, respecting the express desire of the parties, this Court declines the Applicant's request to intervene with an injunction against arbitration. Projex Group Limited is free to raise queries
25 regarding the interpretation of its agreement before the arbitrator. An anti-arbitration injunction serves no purpose when the matter, through the voluntary assumption of parties' obligations, is designed for arbitration. This aligns with the principle of *competenz-competenz* (competence-competence principle) in commercial arbitration, emphasizing that the arbitrator should decide issues related to the arbitration agreement. The competence-competence principle is a fundamental
30 concept in international arbitration. It grants the arbitral tribunal the authority to rule on its own

[22] See Section 25 Arbitration Act, 1968

jurisdiction, including challenges to the existence, validity, or scope of an arbitration agreement. Indeed, comparable foreign case law and international arbitration practices reinforce these principles. Allegations of fraud may not be a basis for judicial interference with an agreement to arbitrate. It is our view that this Court lacks jurisdiction to adjudicate a plea that can be decided by
5 an arbitral tribunal. The overarching idea is to provide a one-stop forum for the effective and efficient resolution of commercial disputes through arbitration, and judicial intervention should not disrupt this process[23].

Finally, this Court must determine whether the Appellant's applications are vexatious, frivolous
10 and an abusive of court process. Now, this Court would like to emphasize that the categories of abuse of court process are not exhaustive. It is incumbent upon the Court to prevent the inappropriate use of its machinery and summarily curtail any attempts to exploit it for vexation and oppression within the litigation process. This principle underscores the Court's commitment to maintaining the integrity of its procedures[24].

15

In the present case, this Court finds and concludes that it is an abuse of court process, frivolous, and vexatious for Projex Group Limited, in the litigant in question, to initiate multiple proceedings or resurrect issues that have already been adjudicated by a competent court between the same parties. Similarly, raising questions and matters in subsequent proceedings that could and should
20 have been litigated in earlier proceedings is an abuse of court process. The Court finds that Projex Group Limited's actions amount to an attempt to secure an injunction under the guise of rejecting the agreement or perpetuating an ongoing abuse of the court process. This observation is supported by the Applicant's Skeleton Argument, which fails to address the American Cynamid criteria for processing injunctions. Thus, indicating a lack of basis for the injunction sought.

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[23] See Ayysamy v. Parasivam and Others Civ. App. No. 8245-8246, Supreme Court of India; Fiona Trust & Holding Corp. and Others v. Privalov and Others [2007] 4 All ER 951, House of Lords, and Court of Appeal in England; Buckeye Check Cashing Inc. v. Cardegna 566 US 440, U.S.S. Ct, United States Supreme Court)

[24] See Castro v. Murray (1875) LR 10 ExD 213 cited with approval Cane Products Limited v. Press Corporation Ltd [2008] MLR 17

The Court, guided by the overriding objective and its inherent jurisdiction to administer justice[25], exercises its authority to strike out such processes as res judicata, frivolous, vexatious, and an abuse of court process. It is so found. Why does the Court conclude thus? It is noted that in March 2023, Projex Group Limited initiated proceedings in Commercial Cause No. 60 of 2023 before Justice Namonde. It is further worth noting that Exhibits BK 2A, BK 2B, BK 3, BK 6, BK 7, and EK 27 confirm that Projex Group Limited did not raise any objections to arbitration during that proceeding. If the Applicant believed that arbitration in London was inappropriate, it had the opportunity to bring up this point before Justice Namonde and Justice of Appeal Chikopa, SC, who rendered decisions on 9 June 2023, and 24 October 2023, respectively, in Commercial Cause No. 60 of 2023. Thus, Projex Group Limited cannot now, under the pretext of Commercial Cause No. 194 of 2023, seek remedies that it failed to pursue earlier. The matter is deemed res judicata and squarely falls under the principles elucidated in ***Cane Products Limited v. Press Corporation Ltd***[26]. The Court concludes that an interim injunction cannot be issued to support Projex Group Limited in seeking relief that is no longer available through any litigation that arose or emerged after 9 June 2023.

DETERMINATION

The main issue that arose to be resolved before this Court was the issue of whether the interim interlocutory injunction granted to the Appellant on 27 December 2023 ought to be vacated. This Court finds and concludes that following the observations made above and considering the terms of the arbitration agreement and the law obtaining in Malawi, there is no reason why this Court must put an anti-arbitration injunction. There is absolutely no reason in fact and in law to sustain the *ex- parte* injunction granted b this Court on 27 December 2023. This Court sets aside the *ex-parte* order it issued on 27 December 2023 because such decision will facilitate the use of arbitration as directed by the Constitution and as agreed by the parties herein.

[25] See Hunter v. Chief Constable of West Midlands [1981] 3 All ER at 727, Mkandawire v. Council of the University of Malawi MSCA Civil Appeal No. 24 of 2007, Ndiwo v. Makina and Another [1990] 13 MLR 313, Henderson v. Henderson (1843) 3 Hare 100, Yat Tung Investments Co. Ltd v. Dao Heng Bank Ltd [1975] AC 581, and Brisbane City Council v. A-G for Queensland [1979] AC 411, 534

[26] [2008] MLR 17

The parties cannot be allowed deviate from the agreed-upon arbitration agreement. This Court will not interfere when there exists a binding arbitration agreement between the Appellant and the Respondent. Further, the suggestion of potential contradictory decisions does not provide a valid basis for an injunction. Instead, it underscores the need for parties to abide by their agreement, especially when the agreement explicitly mandates arbitration. The Court reiterates that contractual autonomy is highly valued, and parties' agreements should be respected. Thus, considering the constitutional, statutory, and judge-made laws in Malawi, the Court affirms the significant weight given to agreements. Constitutional principles, including those of dignity, equality, and freedom, underscore the importance of contractual autonomy. This Court, like in many jurisdictions, recognizes and respects the principle of party autonomy in dispute resolution. This means that parties should generally be allowed to freely choose arbitration as their preferred method of resolving disputes. This Court further recognises that arbitration agreements are valid and binding, and Courts should be inclined to uphold and enforce them. The Court further emphasizes that, except in cases of fraud or where impartiality of the arbitrator is proven, it will not lightly disregard the agreement to arbitrate entered by the parties herein.

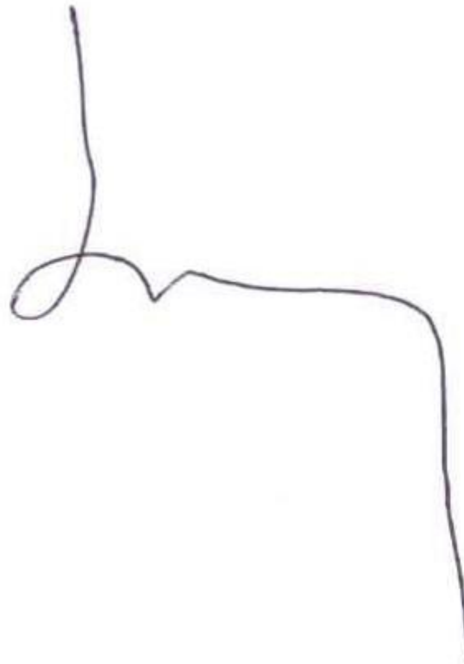
In sum, the Court determines that the parties' commitment to arbitration is legally enforceable, and it refrains from issuing an injunction against their explicit wish. Projex Group Limited is encouraged to raise any concerns regarding the agreement's interpretation during arbitration, as seeking an injunction against arbitration would be unnecessary when the matter is specifically designated for arbitration. Further, drawing parallels with comparable foreign case law and international arbitration practices, this Court underscores the importance of providing an effective and efficient forum for the resolution of commercial disputes through arbitration. Judicial intervention should be limited, and agreements to arbitrate must be upheld, promoting the principles of contractual autonomy. It is so found and concluded.

The long and short of it is that, for the reasons set out above, this Court dismisses the application for an injunction and sets aside the order of 27 December 2023 as it is an abuse of Court process, vexatious and frivolous proceeding. The application is not worthy of any equitable relief of injunction. It is found and concluded.

Costs

Costs to the Respondent.

5 Made in Chambers at the Supreme Court of Appeal, Blantyre this 14th day of March 2024



JUSTICE F.E. KAPANDA SC

JUSTICE OF APPEAL

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