Exhibit 3

IN THE HIGH COURT FOR ZAMBIA **2012/HP/1213**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: SECTION 10 & 11 OF THE ARBITRATION ACT Nº 19 OF 2000

and

IN THE MATTER OF: AN APPLICATION BY ZIMBABWE MINING DEVELOPMENT CORPORATION FOR THE REMOVAL OF STUART ISAACS, SC AND MR JUSTICE MEYER JOFFE AS ARBITRATORS

BETWEEN:

ZIMBABWE MINING DEVELOPMENT CORPORATION	**Applicant**
and	
AMAPLAT MAURITIUS LIMITED	**1st Respondent**
AMARI NICKEL HOLDINGS ZIMBABWE LIMITED	**2nd Respondent**
STUART ISAACS, SC	**3rd Respondent**
MR JUSTICE MEYER JOFFE	**4th Respondent**
THE CHIEF MINING OFFICER OF THE REPUBLIC OF ZIMBABWE	**5th Respondent**

Coram: Honourable Lady Justice F. M. Lengalenga in chambers at Lusaka.

For the applicant	:	Mr. P. Chungu – Messrs Ranchhod Chungu Advocates
For the 1st and 2nd respondents	:	Mr. A. Dudhia – Messrs Musa Duhia & Company

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R U L I N G

CASES REFERRED TO:

1. **AMERICAN CYNAMID COMPANY v ETHICON LTD (1975) AC 396.**
2. **PRESTON v LUCK (1884) 27 CH D 492.**
3. **SHELL & BP (ZAMBIA) LTD v CONIDARIS & OTHERS (1975) ZR 174.**
4. **ZAMBIA STATE INSURANCE CORPORATION v DENNIS MULUKELELA (1990-1992) ZR 18 (SC).**
5. **ZIMCO PROPERTIES LTD v LAPCO (1988-89) ZR 93.**
6. **ALBON (t/a N. A. CARRIAGE COMPANY) v NAZA MOTOR TRADING SDN BHD (2005) 1 ALL ER 351**
7. **HILARY MUKOSA v MICHEAL RONALDSON (1993-94) ZR 26.**
8. **HINA FURNISHING LUSAKA LTD v MWAISENI PROPERTIES LTD (1983) ZR 42.**

This is the applicant's application for an order of interim injunction to restrain the 3rd and 4th respondents from continuing to act as Arbitrators in the dispute between the applicant and the 1st and 2nd respondents and from continuing the arbitral proceedings or at all. The application which is made pursuant to Order 27 of the Rules of the High Court, Chapter 27 of

the Laws of Zambia as read with Order 29 of the Rules of the Supreme Court Practice, 1999 Edition, is supported by an affidavit sworn by one Jacob Mutevedzi, a Zimbabwean national and Attorney at Law practicing in the firm of Mutamangira and Associates and the applicants appointed legal representative. He deposed that he had been verily informed by the advocates acting on the applicant's behalf in these proceedings, Messrs Ranchhod Chungu Advocates that there were presently before this court, proceedings to impugn the independence and impartiality of the 2nd and 3rd respondents in relation to the arbitral proceedings aforementioned. He deposed further that the applicant is a body corporate established in terms of the Zimbabwe Mining Development Corporation Act (Chapter 21:08) of the Republic of Zimbabwe **("the Act")** whose business includes, *inter alia,* investing in mining and mining development on behalf of the Government of Zimbabwe. He further deposed that on or around the 22nd November, 2007, ZMDC, and Amari Holdings Limited **("Amari BV1")** concluded a Memorandum of Understanding for joint prospecting for Nickel and the development of a Nickel mine **("the Nickel MOU").**

Jacob Mutevedzi also deposed that by a Deed of Novation **("the Deed")** dated 6th June, 2008 between Amari BV1, Amari and ZMDC, with effect from 1st May, 2008 Amari BV1 was released and discharged from its rights and obligations pursuant to the Nickel MOU upon Amari's undertaking to Amari BV1 and ZMDC to perform Amari BV1's obligations pursuant to the Nickel MOU and be bound by its terms and conditions as if Amari had been the original party to the Nickel MOU in place of Amari BV1.

He added that by Clause 3.1 of the Deed of Novation, Amari BV1 acknowledged that Amari would be solely entitled to the entire rights and benefits under the Nickel MOU as if Amari were the original party to it in place of Amari BV1.

In paragraph 7 of his affidavit, Jacob Mutevedzi deposed that on or about the 25th July, 2008 ZMDC and Amaplat concluded a Memorandum of Understanding to prospect for platinum and related metals and to develop a mine **("The Platinum MOU").** He deposed further that the Nickel and Platinum MOUs (together **"the MOUs"**) were concluded by Mr. M. J. Nunn **("Nunn")** on behalf of Amari BV1 and Amaplat respectively and by Mr. Dominic Mubaiwa **("Mubaiwa"),** the ZMDC's General Manager, on ZMDC's behalf.

Further in paragraph 9, the deponent herein stated that by a letter dated 10th November, 2010 from ZMDC to the respondents, the ZMDC unequivocally resiled from the MOUs and *inter alia* noted that there was **"a corrupt relationship which unduly influenced the signing of the Platinum MOU,"** stated that there was **"no Joint Venture Agreement regulating our relationship."** Further on in the ZMDC expressed their displeasure at the respondent's conduct which was described as unacceptable, improper and as directly undermining the basic tenets of corporate governance principles and their relationship was declared as terminated for both platinum and nickel properties. A copy of the said letter was annexed and exhibited as **"JM1."**

Jacob Mutevedzi stated that, therefore, in terms of the arbitration clauses of the MOUs, the respondents declared a dispute and referred the matter to the International Court of Arbitration **("the ICA").** He added that the ICA duly set up an arbitral Tribunal in terms of its Rules of Court **("the Rules")** to hear the matter and he attached and exhibited as **"JM2,"** a copy of the Tribunal's Terms of Reference. He deposed that the Tribunal was constituted as follows:

> **"13.1 Stuart Isaacs QC of the United Kingdom nominated by the United Kingdom ICC National Committee (Chairman);**
>
> **13.2 Judge Meyer Joffe of South Africa and respondent's nominee (co-arbitrator); and**
>
> **13.3 Mr. James Prince Mutizwa of Zimbabwe and applicant's nominee (co-arbitrator)."**

The deponent herein stated further that the arbitral proceedings in issue were commenced on 14th August, 2012 and hearings were actually concluded in Cape Town, South Africa on 14th and 15th August, 2012 when the applicant mounted a challenge against the 3rd and 4th respondents on the basis that they were biased. He deposed in paragraph 13 of the affidavit that the applicant's contention and apprehension with regard to the impartiality of the Arbitrators arose out of the proceedings on 15th

August, 2012. He added that the applicant raised concerns on that issue and wrote to the International Chamber of Commerce International Court of Arbitration to that effect in accordance with arbitration agreement. He further deposed that following the request for the Arbitrators to recuse themselves from continuing to preside over the arbitral proceedings, the International Chamber of Commerce International Court of Arbitration responded to the applicant's request in a ruling dated 27th September, 2012 and denied the request for recusal and he attached and exhibited it as **"JM3."**

Jacob Mutevedzi also deposed that the applicant and the 2nd and 3rd respondents had entered into a validly binding Arbitration Agreement and had, by consent appointed Zambia as the seat of arbitration and he annexed and exhibited as **"JM4"** and **"JM5"** respectively, the Arbitration Agreement and evidence of appointment of Zambia as the seat of arbitration.

He deposed further that on the basis of the agreement/s of the parties, the applicant commenced proceedings to impugn the independence and impartiality of the 2nd and 3rd respondents and seeks their removal from the proceedings. The deponent added that at the last hearing of the proceedings presided over by the 2nd and 3rd respondents and in accordance with the ruling exhibited as **"JM3,"** the hearings are expected to reconvene after a 3rd Arbitrator is appointed. He stated further that should the proceeding be convened and the hearings

conducted, the applicant will be prejudiced as it has mounted a challenge against the 2nd and 3rd respondents in this court and that it is in the interest of justice that they be restrained from continuing to act until the issues in this action are concluded and determined. Jacob Mutevedzi further stated that he verily believes that the applicant has an arguable claim with high chances of success once the issues are determined and that if the 2nd and 3rd respondents are not restrained, they will convene the hearings and determine the dispute despite the applicant's challenge and that such as event would gravely and adversely affect the applicant's position and interests and rights and occasion damage that cannot be atoned for in damages.

After the 1st and 2nd respondents' affidavit in opposition to application for injunction filed into court on 7th November, 2012 was expunged from the court record on account of containing extraneous matter and, therefore, considered to be scandalous and defective in its content, a further affidavit in opposition was filed into court on 16th November, 2012. The said affidavit in opposition was sworn by Ian Small Smith, a South African national who deposed that he is a Director of both the 1st and 2nd respondents and that he is also a practicing attorney and consultant at BDK Attorneys, situated at 84 Market Street, Marshall town, Johannesburg. He added that he has also been the legal advisor to the Board of the 1st and 2nd respondents from time to time and attended all the hearings in the arbitral proceedings between the parties. He deposed

further that he is duly authorised to represent the 1st and 2nd respondents in these proceedings and he exhibited **"ISS1,"** a copy of the Resolutions which confirm his authority. Ian Small Smith further deposed that the Nickel MOU and Platinum MOU were the product of fair and honest negotiations which were free of corruption and he added that he had been advised by Counsel that this is not an issue which this court is required to investigate as the same would be determined by the arbitral tribunal. He also confirmed that the applicant wrote to the 1st and 2nd respondents purporting to resile from the said MOUs and the issue was referred to the International Court of Arbitration **(the "ICA")** which duly set up an arbitral tribunal to hear the dispute and he added that the parties signed the submission to the arbitration and the terms of reference of the arbitration. He deposed that the arbitral tribunal comprised of Judge Meyer Joffe, Mr. James Prince Mutiziwa and Mr. Stuart Isaacs, QC who he described respectively as a distinguished retired South African judge of considerable experience, applicant's appointed arbitrator and a distinguished international Queen's Counsel.

Ian Small Smith stated that the applicant renewed its jurisdictional challenge against the appointed arbitrators as a preliminary point at the arbitration proceedings and the Tribunal ruled that it was not appropriate to determine the jurisdictional challenge as a preliminary point and that it would be determined as part of the final award and he exhibited **"ISS2,"** copies from pages 42 to 43 of the record. He stated further that under the Rules to which the arbitration was subject, there can be no further

challenge by the applicant until after the award is delivered. The deponent further stated that despite the Rules prohibiting the challenge, the applicant proceeded to commence this action before the High Court for Zambia.

He deposed further that the applicant in this matter is seeking the same reliefs that it had already earlier sought before the ICA and the Tribunal and which reliefs have already been refused by both forums. He also stated that he believes that the applicant is forum shopping as it seeks a lengthy court litigation in order to illegally derail the Tribunal from adjudicating the merits of the dispute between the applicant and the 1st and 2nd respondents.

Ian Small Smith further stated that he had been advised by Counsel that the Arbitration Act does not permit a party to an international arbitration to obtain an injunction restraining arbitrators from acting as such and from continuing the arbitration proceedings. He added that the 3rd and 4th respondents are obliged to continue with the arbitration and to make an award in terms of both the Rules of the ICA and Arbitration Act.

The deponent of the affidavit in opposition stated in paragraph 28 thereof that he had been advised by Counsel and verily believes that the injunction restraining the 3rd and 4th respondents from sitting in the arbitral proceedings offends the basic principles of international arbitration law including the Arbitration Act. He stated that the 1st and 2nd

despite the fact that they proceeded in isolation and without a third arbitrator. He also deposed that the applicant disclosed in its application that the challenge was mounted relating to the impartiality of the 3rd and 4th respondents and that the ICA reached a decision on that question and it did not hide any material facts and he added that the allegation that it did so in unfounded and baseless.

Jacob Mutevedzi stated further that the response made by the 3rd and 4th respondents to the challenge does not contain any material facts which would have influenced the court to make a contrary decision on the grant of the ex-parte order. He clarified that those responses deal with the impartiality or otherwise of the tribunal and will be determined in the substantive hearing and they were not a factor in the grant of the order of injunction.

The deponent herein concluded by stating that the bias of the 3rd and 4th respondents is evident in the manner that they elected to respond to these proceedings when they indicated that they do not intend to participate in the proceedings and that they would leave it to the 1st and 2nd respondents to defend the claims by the applicant and he attached and exhibited as **"JM2"** a copy of a letter dated 26th October, 2012 to that effect.

The parties herein also filed into court written submissions, skeleton arguments and list of authorities to support their respective positions in the matter.

Counsel for the applicant, Mr. Paulman Chungu submitted that the applicant's application is made pursuant to Order 29, Rule 1 of the Rules of the Supreme Court Rules (1999 Edition). He submitted further that the principles and guidelines to be followed by the court on the hearing of the application for grant of interlocutory applications for grant of an injunction were laid down in the renowned case of **AMERICAN CYANAMID COMPANY v ETHICON LTD[1].** Counsel for the applicant further submitted that in **PRESTON v LUCK[2]** it was held that the following guidelines are to be considered before granting an injunction:

(i) **Whether there is a serious question of law to be determined at trial**

(ii) **Whether the applicant will suffer irreparable damage if the injunction is not granted**

(iii) **Whether the balance of convenience lies in favour of granting the injunction.**

He added that these principles were adopted with approval by the Supreme Court of Zambia in the case of **SHELL & BP (ZAMBIA) LTD v**

CONIDARIS & OTHERS[3] and he submitted that the applicant's case is fully captured under the principles outlined above.

Mr. Paulman Chungu argued on behalf of the applicants that there is a clear right to relief in that the impartiality of the 3rd and 4th respondents have been called into question and they would like the question to be determined whether the 3rd and 4th respondents have conducted themselves in a manner that tends to compromise their impartiality and independence. He added that if the respondents are allowed to continue the proceedings they may render a decision and make an award to the detriment of the applicant and that the court ought to interfere to preserve the status quo without waiting for the right to be finally established at trial.

He relied on Order 29 Rule 1(4) of the Rules of the Supreme Court, 1999 which states that all that needs to be seen is whether the applicant has prospects of success which substance and reality exist odds against success do not defeat him and that that may also be referred to as serious issues to be tried. Counsel for the applicant contended that at this stage, the need only show that there is an uncertainty at the interlocutory stage and he relied on the case of **PRESTON v LUCK** which was approved in the case of **ZAMBIA STATE INSURANCE CORPORATION v DENNIS MULUKELELA**[4]. He contended further that the assertion that the arbitrators were both individually and collectively biased is indisputable and he submitted that it is dear that the 3rd respondent and his mindset were

predisposed from the beginning to perceive the applicant as running a strategy to prevent the rendering of an award.

Mr. Paulman Chungu submitted that the challenge against the 4th respondent cannot be faulted as the 4th respondent demonstrated a clear lack of impartiality when he persistently passed prejudicial and biased commentaries against Zimbabwe and the applicant as epitomised in his perception of a propensity to lawless expropriation on the part of Zimbabwe. He submitted that there are serious matters to be tried and that the applicant opines that no reasonable court applying its mind to the challenge against the 3rd and 4th respondents would have dismissed it and that in the circumstances, in the quest for recourse, the applicant is left with no option but to turn to the supervisory jurisdiction of the court of the seat of arbitration.

It was submitted on behalf of the applicant that the injury to be suffered would be irreparable and cannot be atoned for in damages and that the recourse which a party has to an arbitral processes as provided in section 17 of the Arbitration Act № 19 of 2000, particularly section 17(2)(a)(i) to (v) does not permit for a challenge of the impartiality of the arbitrators. Counsel for the applicant argued that if the applicant is not granted a remedy at this stage and the award is permitted to be delivered, the applicant will have no opportunity under the law to impugn the impartiality and assert the bias of the 3rd and 4th respondents and that that would result in irreparable injury which is permanent and cannot be compensated in damages or at all. He submitted further that Order 29

Rule 1(5) of the Rules of the Supreme Court provides that the governing principle is that the court should first consider whether, if the plaintiff succeeds at trial, he will be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.

Mr. Paulman Chungu submitted further that the applicant will suffer irreparable damage if the 3rd and 4th respondents are allowed to continue acting as Arbitrators and that the loss will be more than a mere inconvenience and that the balance should be interpreted in favour of the applicant. He relied on the case of **ZIMCO PROPERTIES LTD v LAPCO**[5] where the Supreme Court stated:

> **"We must make it clear that the question of balance of convenience between the parties only arises if the harm done will be irreparable and damages will not suffice..."**

In the present case, Counsel for the applicant submitted that in those circumstances, the balance of convenience weighs more in favour of the court granting an order for injunction and that the respondents will not be prejudiced by the granting of an injunction. He submitted further that inspite of the principle of non-interference in arbitrations, in some circumstances, the courts have granted an injunction to restrain the commencement of an arbitration or to continue a foreign arbitration. He added that some of the reasons that have been cited for the exercise of this power by the courts have been instances where there is oppressive,

vexatious or unconscionable conduct. Counsel for the applicant further submitted that the clear bias and impartiality shown by the 3rd and 4th respondents amounts to unconscionable conduct warranting the court to restrain them from continuing the arbitration until the questions are determined by the court in the substantive proceedings in the matter. He relied on the case of **ALBON (T/A N A CARRIAGE COMPANY) v NAZA MOTOR TRADING SDN BHD[6].**

Further, on the issue of disclosure of material facts, Mr. Paulman Chungu submitted that the applicant made full and frank disclosure of all relevant facts. He submitted further that this requirement for disclosure does not presuppose that all facts should be necessarily disclosed even if those facts are irrelevant and that the fact of the objection raised by the 3rd and 4th respondents is not material for consideration when granting an injunction. He added that those facts will be relevant, if at all, at the stage that the court is called upon to consider the substantive claims in this action.

Counsel for the applicant also referred to section 28 of the Arbitration Act, Nº 19 of 2000 which provides that an arbitrator is not liable for anything done or committed to be done in good faith in the discharge of his functions. He submitted that where it can be shown that the act or omission was in bad faith then the arbitrator is liable for that act. In this case, the applicant contends that the bias and impartiality are acts in bad

faith and that for that reason the 3rd and 4th respondents would not be immune to suit according to Counsel's submission.

The applicant contended further that the affidavit in opposition sworn by Ian Small Smith is defective in form and content and that the authority of Ian Small Smith is purportedly derived from his position as Director of the 1st and 2nd respondents and that the resolution he exhibited as **"ISS1"** and that exhibited document was purportedly extracted from a resolution of the 1st respondent made on 13th November, 2013 and the resolution was signed off on 16th November, 2012. Counsel for the applicant argued further that it is evident that the Clerk of Court who commissioned the affidavit in Zambia did not see the certified copy of the extract of the resolution and it further does not bear any stamp or mark of nay officer in South Africa where it was extracted and that it is not in compliance with section 3(d) of the Authentication of Documents Act, Chapter 75 of the Laws of Zambia. He submitted that if the contents of the affidavit in opposition are disregarded the only evidence which will be available for the court to consider will be that of the applicant.

The applicant, therefore, prayed that the order for interim injunction that was granted by this court be extended and the injunction be confirmed.

Counsel for the 2nd and 3rd respondents began by submitting on the principles of injunction law which I will not restate to avoid repetition as

the same has already been submitted on by Counsel for the applicant. He argued that firstly, the applicant has no cause of action to support the injunction or the originating summons as the applicant made its challenge against the 3rd and 4th respondents under the Rules of the International Court of Arbitration and lost and he added that under those Rules, there is no right of appeal against the challenge. He submitted further that the arbitrators have immunity under the Arbitration Act № 19 of 2000 and cannot be sued and that as such the entire action is misconceived in law.

Secondly, it is contended that the applicant submitted to the arbitral proceedings and participated in it by agreeing to and signing the terms of reference with the arbitrators and that the applicant has not shown that it has suffered or is likely to suffer irreparable injury in doing what it agreed to do. Counsel for the 1st and 2nd respondents submitted that the allegation of bias on the part of the 3rd and 4th respondent is completely baseless and untrue and that under the Arbitration Act the applicant can challenge the award after it is delivered. They contended that as such no irreparable injury will be suffered by the applicant if the injunction is not granted.

Thirdly, it was submitted that in view of the fact that the applicant has a statutory right to challenge the award after it is delivered, then the court is being invited to find that the balance of convenience lies in favour of vacating the injunction. Counsel for the 2nd and 3rd respondents submitted further that unless the arbitral proceedings are allowed to

proceed it will make a mockery of arbitration as an alternative dispute resolution process since under the Arbitration Act and its First Schedule (the "Model Law") arbitrators are allowed to rule on their own jurisdiction and control their own process. He strongly urged the court not to allow the applicant to subvert the entire purpose of arbitration by allowing it to sue arbitrator and to injunct existing arbitral proceedings, which were voluntarily entered into.

Counsel for the 1st and 2nd respondents on this issue finally contended that the applicant omitted material facts from this court when it applied *ex-parte* and that therefore, the applicant had not come to court with **"clean hands"** as the entire purpose of this application is to derail the arbitration.

With regard to the issue of the right to relief, he submitted that the issue that the applicant seeks to have determined by this court in the originating summons has already been determined by the International Court of Arbitration (ICA) and that the matter is *res judicata*. He added that a decision having been rendered by the arbitrators and the matter being *res judicata,* there cannot be any clear right to relief for the applicant in these proceedings. He further contended that based on article 13(3) of the Model Law this court has no power to grant the injunctive relief sought by the applicant and that, therefore, the applicant has no clear right to the relief sought in its originating summons. He also noted that the applicant brought its application under sections 10 and 11 of the Arbitration Act and

he submitted that section 10 only applies where proceedings were commenced in court and the court finds that there was an arbitration agreement. Counsel for the 1st and 2nd respondents submitted that, therefore, section 10(1) of the Arbitration Act cannot apply to these proceedings and that as such the originating summons have no legal basis. He submitted that based on the foregoing this court has no power to grant the injunction herein or even to hear the originating summons.

Thirdly, Counsel for the 1st and 2nd respondents submitted that an applicant must also demonstrate that he has reasonable prospects of success in the action as was held in the case of **HILARY MUKOSA v MICHAEL RONALDSON**[7] before he can be granted an injunction. He submitted further that the challenge against the 4th respondent was based on a fundamental misunderstanding of the import and purpose of the questions put to Mr. Mark Summers by the 4th respondent and that they accordingly maintained that there was no reasonable prospects of success for the applicant herein.

It was further contended that the Arbitration Act does not permit a party to an international arbitration to obtain an injunction restraining arbitrators from acting as such and from continuing the arbitration proceedings and it was submitted that, therefore, this action is misconceived in law. Counsel for the 1st and 2nd respondents submitted that the grounds upon which the Zambian courts are entitled to refuse to recognise the arbitral award are governed by section 17 of the Arbitration

Act which includes the right to challenge the independence of the arbitrators. He submitted further that the applicant has no legal basis under Zambian law to make this application to remove the arbitrators and that any challenge it wants to make can only be made after the final award has been delivered. On the issue of immunity of the arbitrators, namely the 3rd and 4th respondents he relied on section 28 of the Arbitration Act which provides:

> "28(1) **An arbitrator, an arbitral or other institution or a person authorised by or under this Act to perform any function in connection with arbitral proceedings is not liable for anything done or omitted in good faith in the discharge or purported discharge of that function."**

He further submitted from the foregoing, that this court action is misconceived in law and that to allow the applicant to personally sue the arbitrators is highly irregular in law.

The fifth issue raised by the 1st and 2nd respondents is that of balance of convenience and prejudice to the 1st and 2nd respondents and it was submitted that where any doubt exists as to plaintiff's rights or if the violation of an admitted right is denied, the court takes into consideration the balance of convenience to the parties. Counsel for the 1st and 2nd respondents submitted that the burden of showing the greater inconvenience is on the plaintiff as was established in the **SHELL & BP**

(ZAMBIA) LTD case. He submitted that the applicant will not suffer if the arbitration proceedings continue and are finally determined by the tribunal. He added that the applicant has a remedy as it can challenge the award under section 17 of the Arbitration Act and that the 3rd and 4th respondents are obliged in terms of both the Rules of the ICA and the Zambian Arbitration Act to continue with the arbitration and to make an award.

With respect to the issue of failure to disclose, Counsel for the 1st and 2nd respondents contended that there was no basis for the applicant not to have given the respondents notice of its intention to approach this court for relief and that the only reason why it did not give notice is because it wanted to ambush the 1st and 2nd respondents. He submitted that the applicant misled this court by not disclosing material and relevant facts at the time it sought and obtained the *ex parte* order; and further by not drawing the court's attention to the express provisions of the Act which stipulate that this court has no power to grant injunctive relief restraining the continuation of the arbitration process. Counsel for the 1st and 2nd respondents argued that had proper disclosure been made this court would not have granted the order and he relied on the case of **HINA FURNISHING LUSAKA LTD v MWAISENI PROPERTIES LTD**[8] wherein this court held that he who comes to equity must come with clean hands or else the court may not exercise its discretion to grant the remedy he seeks.

In conclusion, Counsel for the 1st and 2nd respondents submitted that the application for the injunction is misconceived in law and that this court has no jurisdiction to grant the injunction. He further submitted that the applicant suppressed material facts and laws from this court and are merely trying to frustrate the arbitral proceedings means that they have not come to court with clean hands and that as such the applicant does not deserve the exercise of this court's equitable jurisdiction in its favour. He finally submitted that no irreparable injury will be suffered by the applicant if the arbitral proceedings that the applicant submitted to proceeds and he reiterated that the balance of convenience is in favour of vacating the injunction and he urged the court to discharge the *ex parte* injunction that was granted on 15th October, 2012.

I have carefully considered the application for an injunction to restrain the 3rd and 4th respondents from continuing to act as Arbitrators in the dispute between the 1st and 2nd respondents and from continuing the arbitral proceedings or at all. The affidavit evidence in support of the application, in opposition and in reply is quite comprehensive and I will not go into it. The law relating to the granting of injunction has also been adequately stated so it only remains for this court to determine whether this is a proper case in which to grant this discretionary remedy. What emerged from the arguments before this court is that the applicant having submitted to the arbitral proceedings and participated in it by agreeing to and signing the terms of reference with the arbitrators could not turn around and challenge the arbitral process before the conclusion. Further, it is clear under the provisions of the Arbitration Act that the applicant can

challenge the award after it is delivered so that no irreparable injury would be suffered if the injunction is not granted.

Another issue that arose is that the applicant having challenged the 3rd and 4th respondents under the Rules of the International Court of Arbitration and lost had no right of appeal against the challenge. The action by the applicant is perceived as being misconceived in law as the abitrators have immunity under the Arbitration Act No. 19 of 200.

There was also an allegation that the applicant had not come to court with "clean hands" as the purpose of this application was to derail the arbitration process.

Learned Counsel for the 1st and 2nd respondents raised the issue of sections 10, and 11 of the Arbitration Act which only apply where proceedings were commenced in court and the court finds that there is an arbitration agreement. However, this was not the position in this case which was brought under sections 10 and 11 of the Act, and as such the question of jurisdiction comes in. It was further contended that the Arbitration Act does not permit a party to an international arbitration to obtain an injunction restraining arbitrators from acting as such and from continuing the arbitration proceedings and that this action is misconceived in law.

Having considered the issues raised in this application, I am satisfied upon perusal of the provisions of the Arbitration Act, particularly sections 10, 11, 13 and 17 that this matter is not properly before this court in terms of jurisdiction and the fact that the applicant can challenge the award after it is made. To restrain the arbitrators from acting as such and from

continuing the arbitration proceeding is contrary to the spirit of the provisions of the Arbitration Act and is intended to subvert the arbitral process thereby making a mockery of the same.

It also has become apparent that the applicant suppressed material facts and laws from this court thereby misleading it to grant the ex-parte order of injunction. Clearly, from the aforestated, not only is this matter improperly before this court but the applicant has failed to demonstrate that his is likely to suffer irreparable injury or damage, as he has recourse to challenging the final arbitral award.

In conclusion, I find that this court has no jurisdiction to deal with this matter under sections 10 and 11 of the Arbitration Act No 19 of 2000 and I, accordingly decline to confirm the order of interim injunction granted ex-parte on 18th October, 2012. I, hereby, accordingly discharge the said injunction with costs. Leave to appeal is granted.

DATED this 19th day of June, 2014 at Lusaka.

F. M. LENGALENGA
JUDGE