

**Insights**

## **TIME LIMITS FOR ARBITRAL AWARDS: A CASE SUMMARY**

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### **SUMMARY**

In *Alphamix Ltd v The District Council of Rivière Du Rampart (Mauritius)* [2023] UKPC 20, an appeal from the Supreme Court of Mauritius, the UK Privy Council has allowed the appeal and upheld the arbitrator's award, where the award had been annulled by the Mauritian court for being given three days after the date specified for providing an award.

### **KEY FACTS**

The arbitration had commenced in 2015 and there had been several extensions to the date for the award. On 29 November 2018, a "final extension" was agreed to 31 December 2018. Arrangements were made for the arbitrator to deliver his award in person to the parties on 27 December 2018. However, due to illness, the arbitrator postponed the appointment, first to 28 December and then to 31 December.

On 31 December 2018, the parties met with the arbitrator to discuss delivery of the award, and the operative section of the award was read out to the parties. The parties were provided with an unsigned draft version of the award (it was prepared by this date, but not formatted or edited) and informed that the edited version, which would not change the substance of the findings, would be provided "later on". Neither party objected at this point – the arbitrator was ill and the next working day would be 3 January 2019.

On 3 January 2019, the parties were informed, by email, that the formatted, edited and signed version of the award delivered on 31 December 2018 was now ready for collection. A copy of the award, signed and dated 31 December 2018, was attached to the email.

On 22 January 2019, the Respondent applied to the Supreme Court of Mauritius for an order annulling the purported award dated 31 December 2018 and the signed award delivered on 3 January 2019. On 14 January 2022, the Supreme Court granted the application and annulled the award on the basis that it was delivered after the arbitrator's mandate had expired. This decision was appealed to the UK Privy Council.

## THE APPLICABLE LAW

Under the provisions of the Mauritian Civil Procedure Code (which governs domestic arbitrations in Mauritius), the mandate of an arbitrator - if no time limit is fixed by the arbitration agreement - lasts for six months from the date of appointment. This period may be extended by agreement of the parties. One of the grounds (set out in article 1027-3 of the Code) on which an arbitration award may be annulled is if the arbitrator's decision is not within the mandate conferred on him by the parties ("l'arbitre a statué sans se conformer à la mission qui lui avait été conférée"). In addition, it is a mandatory requirement that an award is signed by the arbitrator(s), failing which it is a nullity.

## ISSUES IN THE APPEAL

Two arguments were made by the Appellant:

1. **Date of signature argument:** The Supreme Court ought to have decided that the award delivered on 3 January 2019 was valid because: (a) as a matter of law it is sufficient that the award is signed, even if it is not communicated to the parties, before the mandate expires; and (b) as the award communicated to the parties on 3 January 2019 was dated 31 December 2018, the court should have found that the award was signed on that date unless the contrary was proved, which it was not.
2. **Tacit extension or prorogation argument:** In any event the Supreme Court ought to have held that the parties agreed to extend the arbitrator's mandate beyond 31 December 2018, with the result that the award delivered on 3 January 2019 was within the scope of the mandate even if it was not signed until that day; alternatively, the District Council waived the right to contend otherwise.

## THE PRIVY COUNCIL DECISION

Although put forward as the alternative argument, the court found it convenient to consider first the argument that there was an agreed extension of the arbitrator's mandate.

### TACIT PROROGATION

It is accepted law that the mandate of an arbitrator can be extended via express or implied consent of the parties. No formalities are required and necessary consent may be implied from conduct. The approach under the law of Mauritius is that the common intention of the parties must be assessed having regard to the context surrounding circumstances, and that the court may draw appropriate inferences to give effect to the common intention of the parties.

The court was satisfied that the communications and conduct of the parties demonstrated an unequivocal common intention formed and manifested on 31 December 2018 that delay until 3 January 2019 in providing the final, signed version of the award would not result in the award being invalid. That amounted to a tacit agreement to extend the time limit for rendering the award until (at

the earliest) 3 January 2019. Therefore, the award provided on that day, in favour of the contractor, was within the arbitrator's mandate, being valid and enforceable.

Whilst there was some ambiguity about what the arbitrator meant by "later on", the court concluded that it must have been understood by everyone present at the hearing on 31 December 2018 that the final version of the award would not be provided later that day. As the next two days were public holidays, as stated above, the earliest the award could have been provided was 3 January 2019.

## DATE OF SIGNATURE

In light of the above, it was not relevant whether the award was signed on 3 January 2019, or whether it had already been signed by the arbitrator on 31 December 2018 (the date shown on the award). Therefore, this point was not considered further by the court.

**The appeal was allowed - the signed award delivered on 3 January 2019 being valid and enforceable in accordance with the Civil Procedure Code.**

## COMMENTARY

Although this decision related to the specific provisions of the Mauritian Civil Procedure Code which governs domestic arbitrations, the decision is relevant more widely because time limits for rendering awards are often included in arbitration clauses – either by express agreement or the adoption of arbitration rules or submission to an arbitration law that includes a time limit. For example, the ICC 2021 Arbitration Rules (and the 2017 Rules) provide that the final award must be rendered within six months of the Terms of Reference, although a different time limit might be fixed by the ICC Court or extended by the same (Article 31). As an incentive to meet this deadline, the ICC Court has the discretion to increase or lower the arbitrator's fees (paragraphs 154 and 155 of the 2021 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration).

Setting a time limit is designed to speed up the arbitration process, but it can cause serious problems, particularly in cases where there is no provision for the time limit to be extended. Although the award was found to be valid in this case, it is a reminder to arbitrators (and parties) that there may be serious consequences to the late rendering of an award.

The other key lesson is that, regardless of the formal requirements, the court will take account of how the parties conducted themselves and what they said, even where there is no formal agreement recorded in writing. The Privy Council is made of the same judges as the Supreme Court and this is therefore an authoritative indication of how a court may treat such a situation. The lesson is that if a party goes along with a certain course of events, it may find it difficult to later raise a challenge that it could have raised at an earlier stage.

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This article was written with Trainee Solicitor Danielle Yap.

## RELATED CAPABILITIES

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- Litigation & Dispute Resolution

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