

State immunity irrelevant in arbitration award registrations, High Court finds

The Law Society Gazette (UK) By Bianca Castro

23 January 2024

Zimbabwe has failed in the English courts to set aside on state immunity grounds an order registering a \$124m arbitration award over land in the African country.

Mrs Justice Dias, in *Border Timbers Limited & Anor v Republic of Zimbabwe* said there was ‘no basis’ for Zimbabwe’s application and ‘state immunity is irrelevant’ to registration applications.

She added that her ‘novel approach’ gave ‘full force and effect to the United Kingdom’s international obligations under the [1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States] to recognise and enforce ICSID awards’ and ‘does no violence to the principles of state immunity because an order for recognition and enforcement goes no further than recognising the award as binding’.

The US\$124m plus interest award and a further US\$1m in ‘moral damages and costs’ was made in 2015, under the ICSID. It related to alleged expropriation of land in Zimbabwe belonging to Border Timbers Limited and Hangani Development Co. (Private) Limited.

Zimbabwe’s application to have the award annulled through the ICSID convention was dismissed. The claimants’ successfully applied to the English court for registration and entry of judgment. Zimbabwe applied to set aside the order on the basis that it was immune from the jurisdiction of the UK courts.

The judge said: ‘I am quite clear that the award is final and binding...and that it is not open to the English court to review the merits of the decision or the jurisdiction of the tribunal. In this specific context, I regard it as highly relevant that ICSID is a self-contained regime and that the only permitted avenue of challenge to an award is via the process for annulment within the confines of the convention.’

In applications to register ICSID awards, the state ‘is not impleaded unless and until the order granting registration is served on it’.

The judge said: ‘The question of sovereign immunity does not arise in relation to an application to register an ICSID award. It is therefore not open to Zimbabwe to apply to set it aside on that basis, although it may of course claim immunity in relation to any further steps towards execution.’

She added that the claimants would be penalised in costs for failing to make full and frank disclosure in what the judge said was a ‘culpable, albeit not deliberate’ breach of duty.

<https://www.lawgazette.co.uk/news/state-immunity-irrelevant-in-124m-arbitration-award-high-court-finds/5118495.article>