SUPREME COURT OF SEYCHELLES

Reportable
MA 179/2025 arising out of CC 26 of 2025

In the matter between:

ILE DU PORT HANDLING SERVICES LIMITED **Petitioner**
(Represented by Mr. Frank Elizabeth)

VIJAY CONSTRUCTION (PTY) LTD **Respondent**
(Represented by Mr. Rajasundaram)

Neutral Citation:	*Ile du Port Handling v Vijay* (MA 179/2025 arising out of CC 26/2025) 6th February 2026
Before:	Burian, Judge
Summary:	Motion pursuant to Article 138(2) of the Commercial Code Act- leave to register an Interim order dated 25 July 2024
Heard:	Written submissions
Delivered:	6th February 2026

ORDER

The application for leave to register the purported interim award dated 25 July 2024 pursuant to Article 138 (2) is denied.

RULING

N. BURIAN J

BACKGROUND FACTS:

[1] The parties are presently engaged in ongoing arbitral proceedings arising from a dispute concerning the construction of a quay at Ile Du Port. The arbitration, which had been adjourned for over one year, has recently been revived following the appointment by the Court of a new arbitrator, Justice Bernardin Renaud, to replace the former arbitrator and to enable the proceedings to resume.

[2] Concurrently, Vijay Construction (Pty) Ltd ('the Respondent') filed a plaint seeking declaratory relief to the effect that the interim award issued by the former arbitrator be

declared incapable of enforcement and of no legal effect. In the alternative, it seeks an order setting aside the interim award on the ground that it is contrary to public policy, among other grounds. That matter remains pending before the Court, with the defence yet to be filed. In the meantime, the Applicant (Defendant in CC 26 /2025) has, in the present proceedings, filed MA 179/2025 seeking leave to register the said interim award dated 25th July 2024.

[3] Since assuming authority over of these files, I have sought to dispose of the repetitive and duplicative applications. The issue relating to the appointment of a new arbitrator has already been resolved and consolidated. This leaves CC 26/2025 and MA 179/2025 as the remaining matters for determination.

NOTICE OF MOTION AND SUPPORTING AFFIDAVIT:

[4] Ile du Port Handling Services ('the Applicant') has filed a notice of motion seeking leave to register an arbitral award pursuant to Article 138(2) of the Commercial Code Act of Seychelles ('CCA'). The application seeks leave to register the interim award dated 25 July 2024, made by the Honourable Justice Francis McGregor in his capacity as sole arbitrator in Arbitration Case No. 1 of 2022. Upon such leave being granted, the Applicant further seeks an order directing the Registrar to record the registration of the award and to serve notice of the registration on the Respondent, in accordance with Article 139(1) of the CCA. In addition, the Applicant seeks directions and leave to apply for case management orders, including any application for a stay pursuant to Article 139(5), as well as an order for the costs of the application.

AFFIDAVIT IN REPLY:

[5] In an affidavit in reply sworn by Mr. Vishram Jadva Patel of La Misère, Mahé, Seychelles, it is averred that the interim award which the Applicant seeks to register is already the subject of a plaint pending before this Honourable Court. The deponent states that the Respondent challenges the document described as an 'interim award' on the basis that it is mischaracterised and does not constitute a valid or legally binding award in terms of the applicable law.

[6] It is further averred that the alleged interim award is not enforceable by the court for the reasons set out in the plaint, and that it remains liable to be contested before the arbitrator. The deponent asserts that registration of the interim award should not proceed until a new arbitrator has been duly appointed and the arbitration has recommenced, thereby allowing the award to be properly challenged within the arbitral process.

[7] The affidavit further avers, on legal advice, that the preconditions set out in Article 132 of the CCA apply only to final awards and not to interim awards, particularly where such interim awards are being challenged in law. It is asserted that an arbitral award may only be enforced once it is no longer capable of being contested before the parties or the arbitrator.

[8] Reliance is placed on Article 138(1) of the CCA with the contention that the Applicant has failed to invoke or satisfy that provision, instead relying solely on Article 138(2). As the alleged interim award is currently under challenge, it is asserted that there is, in law, no arbitral award capable of registration. On this basis, the deponent avers that the application is premature. Accordingly, the Honourable Court is urged to dismiss the notice of motion dated 11 August 2025.

WRITTEN SUBMISSIONS OF THE APPLICANT:

[9] Counsel for the Applicant contends that the present application follows directly from the ruling delivered by Burhan J on 22 July 2025 in MA 45/2025, in which the court expressly directed that enforcement of the award in this matter must proceed under Articles 132 to 139 of the CCA. It is submitted that the Code provides clear statutory authority for the registration of interim awards and that such awards have the same legal effect as final awards. In the circumstances, it is argued that there are no valid legal grounds to refuse registration.

[10] Counsel maintains that the CCA constitutes the *lex arbitri* governing this dispute. It expressly recognises interim awards and accords them the same legal force as final awards. Reliance is placed on Article 142 of the Commercial Code, which provides that any reference to an "award" includes a reference to an interim award. Counsel

submits that the statutory language is unambiguous and that the legislature has deliberately removed any distinction between interim and final awards for the purposes of validity and registration. Accordingly, it is submitted that the interim award dated 25 July 2024 constitutes a valid award within the meaning of the CCA and is eligible for registration.

[11] It is further submitted that there is no substantial legal objection to the registration of an interim award, and that established case law supports the position that, once the procedural mechanism prescribed by the Code has been complied with, registration ought to be granted. Reliance is placed on *Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd*[1], in which the Supreme Court reaffirmed that the recognition and enforcement of arbitral awards are governed by the Commercial Code and effected through registration.

[12] Counsel further avers that the approach adopted by the CCA is consistent with modern arbitration jurisprudence across the Commonwealth, where courts routinely grant leave to enforce interim awards to preserve the efficacy of the arbitral process. Counsel referred to authorities from India[2] and Mauritius[3], where it is asserted that 'interim awards' have been held to be binding and enforceable under the respective arbitration legislation in those jurisdictions.

[13] I wish to highlight that though case law cited from India and Mauritius may have some jurisprudential value, there applicability is limited because the legislation governing arbitral awards in these jurisdictions defers from that of our jurisdiction. In India for example, the Arbitration Act 1940 contains no provision requiring party consent and arbitrators are expressly empowered by statue to issue interim awards at their discretion. Likewise, in Mauritius courts are guided by the Supreme Court (International Arbitration Claims) Rules 2013 which is markedly different from our

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[1] (2020 SCSC 350)

[2] Amazon.com NV Investment Holdings LLC v Future Retail Ltd & Ors

[3] National Bank of Canada v IBL Ltd & ors [2022 SCJ 416]

own legislation. Mauritius has deliberately separated interim measures (which are court ordered, or tribunal ordered provisional relief) from the recognition and enforcement of arbitral awards. As such, interim relief is obtained through the court itself, as was the circumstances in the case of *National Bank of Canada.*

[14] By way of additional submissions in response to the Respondent's arguments, counsel submits that the Respondent's objections are misconceived in law, unsupported by authority, and contrary to established arbitration principles in Seychelles.

[15] It is argued that the Respondent's submissions impermissibly conflate procedural rules with substantive law. This fundamental error is said to permeate the Respondent's case and to have led to incorrect conclusions regarding the applicable legal framework. Secondly, it is contended that the Respondent is attempting to expand the limited and exhaustive grounds upon which registration may be refused, beyond those expressly stated in Article 134 of the CAA. Such an approach is submitted to be impermissible and inconsistent with the pro-enforcement policy underlying modern arbitration law.

[16] Counsel also contends that the Respondent's characterisation of the interim award as incapable of enforcement is said to ignore both the substantive content of the award and the settled jurisprudence of this Court recognising the enforceability of interim awards that finally determine particular issues. Furthermore, that the Respondent's reliance on alleged procedural irregularities amounts to an impermissible collateral attack on the arbitral process. Such challenges, if any, ought to have been pursued through the appropriate mechanisms during the arbitration itself.

[17] Lastly, the Respondent's objection to the application for leave to register the interim award is said to be procedurally defective and legally misconceived. Counsel submits that the only permissible method of challenging an arbitral award is by way of an application to set aside under Article 134(1) of the Commercial Code, and not by opposing an application for registration. Article 134 provides that an arbitral award may be challenged before the court only by an application to set aside, and only on the grounds specified therein. The Applicant further submits that the Respondent is now

time-barred from challenging the interim award. The Commercial Code prescribes a three-month period within which an application to set aside an award may be brought, calculated from the date on which notice of registration of the award is duly served on the other party. That period has elapsed, and the Respondent can no longer challenge or object to the registration of the interim award.

[18] Counsel further submits that an award is enforceable where it finally determines a discrete issue between the parties, even if other issues remain to be resolved in subsequent proceedings. In this regard, reliance is placed on *Flame SA v Glory Wealth Shipping Pte Ltd*[4], in which the English High Court held that an award which finally determines a particular issue is enforceable as a partial or interim award, notwithstanding that it does not dispose of all matters in dispute. Reference is also made to *Socadec SA v Pan-afric Impex Co Ltd*[5], where the court confirmed that the requirement of finality relates to the issues determined by the award, and not to the entirety of the dispute.

[19] Applying these principles, it is submitted that the interim award in the present case finally determines several issues, namely that the Respondent is liable for defects in the construction of the concrete quay apron and that the Respondent is obliged to undertake remedial repairs at its own cost, with the timeframe for commencement to be agreed between the parties. These determinations are final as to the issues they address, and the Respondent cannot now revisit either liability or the obligation to repair. Accordingly, the award satisfies the requirement of finality for enforcement purposes.

[20] It is further submitted that the question of whether an arbitrator has received sufficient evidence to make a determination is a matter within the arbitrator's procedural discretion. An arbitrator is entitled to decide when sufficient evidence has been adduced on a particular issue and to issue an award accordingly. If the Respondent

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[4] [2013] EWHC 3153 (Comm)

[5] [2003] EWHC 2086 (Comm)

was dissatisfied with such procedural decisions, its remedy was to object during the arbitration or to seek recourse under the applicable procedural rules. In any event, the Respondent participated fully in the arbitration hearings conducted between April 2024 and 3 May 2024 and had ample opportunity to present evidence on the issue of liability for the alleged defects. Having heard that evidence, the arbitrator was entitled to conclude that liability could be determined on the material before him, leaving only consequential matters to be addressed subsequently. Reliance is placed on *Minmetals Germany GmbH v Ferco Steel Ltd*[6], where the English Court of Appeal held that an arbitrator's procedural decisions, including decisions on the sufficiency of evidence, do not justify refusal of enforcement unless they amount to a serious irregularity causing substantial injustice.

[21] The Applicant also rejects the Respondent's assertion that the purported award was merely a proposal rather than a binding determination. This contention is contradicted by the clear and mandatory language used by the arbitrator in the interim award and the Respondent's attempt to recast that language as merely precatory is described as artificial and unsustainable.

[22] It is submitted that the fact that the interim award does not dispose of all issues between the parties does not preclude its enforcement. Article 138 of the CCA provides for the registration and enforcement of an award made pursuant to an arbitration agreement and does not distinguish between final awards and interim or partial awards. The legislative intent is clear in that awards determining substantive rights and obligations are capable of enforcement notwithstanding that further arbitral proceedings may be required to resolve remaining issues. Any contrary interpretation would undermine the efficacy of arbitration by enabling parties to resist enforcement of binding determinations on technical grounds.

[23] The Applicant further contends that the CCA is unquestionably the applicable substantive law governing the enforcement of interim awards. Articles 132 to 139 of

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[6] [1999] CLC 647

the Commercial Code establish a comprehensive regime for the recognition and enforcement of arbitral awards in Seychelles. This regime creates substantive rights and obligations, including the right to deposit an award with the registry, the right to apply for registration, the limited grounds upon which registration may be refused, and the legal effect of registration, namely that the award becomes enforceable as a judgment of the court. It is submitted that these provisions are not merely procedural in nature but confer substantive entitlements on successful parties to arbitration. Is have consistently applied Articles 132 to 139 as the governing framework for the enforcement of arbitral awards in Seychelles, and the ruling of Burhan J dated 22 July 2025 expressly confirmed their applicability to the present dispute.

[24] It is Counsels contention that the COMESA Rules are procedural in character and do not purport to govern post-award enforcement before the court of the seat of arbitration. For all these reasons, the Applicant submits that the CCA governs the enforcement of the interim award and that the award should be registered and enforced accordingly. Counsel submits that Article 134 of the Commercial Code provides an exhaustive list of the grounds upon which the registration of an arbitral award may be refused. The Applicant respectfully invites the court to consider the specific grounds set out in Article 134, none of which include objections founded on procedural rules adopted by the parties. It is submitted that the Respondent has failed to identify any ground under Article 134 that is engaged by the facts of the present case. Instead, the Respondent seeks to introduce de facto additional grounds for refusing registration by reliance on the commercial arbitration rules. Counsel submits that such an approach is impermissible and must be rejected, as the parties cannot expand the statutory grounds for refusing registration beyond those expressly provided for in Article 134.

[25] It is submitted that the Respondent's arguments concerning alleged procedural irregularity and lack of finality, and the purported interim nature of the award, are misconceived. These matters do not constitute grounds for refusing enforcement under Article 134. The Respondent had a full opportunity to present its evidence during the arbitral hearings, and if it was dissatisfied with any procedural decision taken by the arbitrator, its remedy lay in raising an objection during the arbitration or seeking recourse under the COMESA Arbitration Rules, not in resisting enforcement at the registration stage.

[26] It is also submitted that the public policy exception to enforcement is to be construed narrowly in the context of international and commercial arbitration. It applies only where enforcement would violate the most fundamental principles of the legal order of the enforcing State. Nothing in the interim award offends the public policy of Seychelles. The award determines a commercial dispute arising from a construction contract, directs the party found responsible for defects to undertake remedial repairs, was issued by a duly appointed arbitrator following proper proceedings, and complies with the formal requirements of the Commercial Code. Accordingly, it is submitted that the Respondent has failed to identify any principle of Seychelles public policy that would be violated by enforcement of the award.

WRITTEN SUBMISSIONS OF RESPONDENT:

[27] Counsel for the Respondent submits that the court is required to determine three principal issues. First, whether the interim award is capable of enforcement as a judgment of the court. Secondly, if the decision of the sole arbitrator is properly characterised as an interim award and if found in the affirmative, whether the award should be set aside on the ground that the Respondent was unable to present its case during the arbitral proceedings, pursuant to Article 134(2)(g) of the CCA. It is argued that the Respondent was denied procedural fairness which forms an integral part of public policy as recognised under Article 134(2A) of the CCA.

[28] Alternatively, it is argued that the award should be set aside because no reasons were stated for the decision, contrary to Article 134(2)(g). Thirdly, and again on the assumption that the arbitrator's decision is deemed to be a valid interim award, it is submitted, in the alternative to the procedural fairness ground, that the sole arbitrator exceeded the scope of his jurisdiction or authority in issuing the decision. On that basis, it is contended that the specific directions contained in the purported interim award ought to be set aside pursuant to Article 134(2) (d).

<u>Enforceability of the 'interim award':</u>

[29] It is submitted that the jurisdiction and authority of an arbitral tribunal are derived exclusively from the parties' agreement, reflecting the foundational principle of party autonomy. This principle was allegedly affirmed by the High Court of Australia in *CBI Constructors Pty Ltd v Chevron Australia Pty Limited*[7], where I explained that an arbitral tribunal's jurisdiction depends on the scope and context of the parties' voluntary consent to submit their commercial dispute to arbitration.

[30] The Applicant's counsel submits that the sole arbitrator's decision was made in breach of the principle of party autonomy and contrary to the parties' agreement, which contemplated that expert witnesses would be heard before any determination was made. In these circumstances, it is difficult to see how the arbitrator could properly make any decision without first hearing the expert evidence. It is therefore reasonable to infer, from the deliberations at the relevant meeting (proceedings of the 24 July 2024), that the arbitrator would have sought and relied upon expert opinions regarding the appropriate remedial works before making any interim determination.

[31] It is argued that it was not the arbitrator's role to usurp or supplant the primary function of the experts in the dispute resolution process, nor to replace their technical assessments with his own independent views on liability for remedial works. Furthermore, the document described as an 'interim award' was dated 25 July 2024 but was not transmitted to the parties until 26 August 2024 and upon receipt, counsel for the Applicant queried the nature and status of the document in correspondence with the arbitrator following which, and immediately thereafter, the sole arbitrator notified the parties that he was resigning on medical advice.

[32] It is submitted that the arbitrator erroneously characterised his decision as an interim award and that a review of the purported award in its factual and procedural context demonstrates that it was rendered without reasons and did not involve any finding on,

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[7] [2024] HCA 20

or determination of, the substantive rights of the claimant. Furthermore, it fails to state the place where the award was made, namely the seat of the arbitration.

[33] Counsel advances the argument that as a matter of principle, interim awards do not possess final legal status and are not binding. Moreover, the parties were deprived of any opportunity to seek clarification or interpretation of the arbitrator's decision, as the arbitrator resigned immediately after issuing the document. Furthermore, the Applicant contends that the relief granted by the arbitrator was genuinely interim in nature and, as expressly stated by the arbitrator himself, was to be read as non-binding and merely as a suggested settlement proposal. This is reinforced by the fact that Applicant was compelled to seek clarification because the document lacked the minimum information necessary to understand the arbitrator's reasoning. It is argued that the arbitrator's response to that query further supports the assertion that the document was not intended to constitute an arbitral award at all.

[34] Counsel referred to the authority of Gary Born, *International Commercial Arbitration* (2009 ed.), at pages 2352/2353/2354, where it states that not every communication issued by an arbitral tribunal constitutes an arbitral award. Born further identifies three essential conditions inherent to the concept of an arbitral award:

- the decision must result from a valid agreement to arbitrate;
- it must possess minimum formal characteristics inherent in the concept of an award; and
- it must resolve a substantive issue, rather than a merely procedural matter.

[35] It is asserted that these principles are reflected in Article 131(5) and (6) of the Commercial Code and Rule 30(5) and (6) of the COMESA Arbitration Rules, which require an arbitral award to be in writing, dated, signed by the sole arbitrator, and to state the reasons for the decision. An award must also specify the date and place at which it was made and clearly identify the subject matter of the dispute together with the arbitrator's findings.

[36] It is further submitted that it is an implied term of every arbitration agreement that any resulting award must be in a form capable of enforcement in the same manner as a

judgment of a court. By analogy, it is common judicial practice that a court deciding a case resolves the essential issues in dispute and expressly addresses the key evidence relied upon by the parties. In this regard, reference is made to the statement of Lord Dyson MR[8], who observed that the civil justice system requires judgments to demonstrate that the essential issues raised by the parties have been considered and resolved, particularly in cases turning on oral evidence and credibility. A failure to address the principal grounds of challenge undermines the fairness of the process, as parties cannot have confidence that their arguments were properly considered.

[37] Applying these principles, the Applicant argues that the purported interim award lacks the minimum formal requirements of an arbitral award and is defective both in form and substance. Furthermore, it was made in a manner inconsistent with the arbitration agreement, the COMESA Arbitration Rules, and the lex arbitri. Accordingly, it has no legal or enforceable status.

Uncertainty/ ambiguity:

[38] It is further contended that the purported interim award is uncertain, ambiguous, and capable of multiple interpretations as to how the arbitrator resolved the matters referred to him. The arbitrator's failure to define with precision what the Respondent was required to do in order to comply with the purported award and renders it inherently difficult, if not impossible, to perform, and therefore defective. In the purported interim award, the arbitrator directed that the remedial work was to *"start within a month hereof, subject to inspection by representatives of both Respondent and Complainant,"* further stating that a time limit was to be agreed between the parties, failing which the arbitrator would fix such a time limit, and that a formal document to this effect was to be drawn up. However, the formal document expressly contemplated by the arbitrator was never prepared, which is inconsistent with, and undermines, the arbitrator's own determination.

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[8] Harb v HRH Prince Abdul Aziz Bin Fahd Bin Abdul Aziz [2016] EWCA Civ 556 at para 39

[39] Moreover, it is submitted that the purported award is unclear as to when the one-month period for commencement of the remedial works was intended to run., it is also unclear whether the execution of the remedial works was contingent upon the preparation of the contemplated formal document and in addition, the purported award imposes no express obligation as to the completion of the works within any defined timeframe. As such Counsel advances the argument that the arbitrator's decision, as expressed in the purported interim award, raises two fundamental questions. First, what is the nature and extent of the obligation imposed on the Respondent to undertake the remedial works, namely, whether that obligation is absolute or qualified. Secondly, whether the cracking and settlement of the apron were caused by factors such as inadequate specifications, an issue which had not yet been determined.

[40] It is submitted that the purported award is thus neither final nor determinative of the issues to which it relates and is incomplete in that it is expressly subject to further amendment. Further, the arbitrator improperly conferred upon himself an ongoing power to vary the award if the parties failed to agree on a timetable for performance. In these circumstances, it is contended that the purported interim award is incapable of performance and that its enforcement would be contrary to public policy.

Substantial justice:

[41] Counsel for the Applicant contends that it was not afforded a reasonable opportunity to address the basis upon which the arbitrator's decision was made. It is submitted that the arbitrator either overlooked, mischaracterised, or failed to give proper consideration to the expert evidence concerning the load-bearing specifications of the quay apron before issuing the purported interim award.

[42] Following the adjournment of the hearing on 3 May 2024, the parties expressly requested the arbitrator to determine the critical question of whether there had been any variation to the specifications to which the quay apron was required to be constructed. In a letter to the arbitrator dated 5 August 2024, counsel for the Applicant made clear that the arbitrator would be required to make factual findings as to the variations existence, it's compliance with the terms of the contract, the precise nature of any such variation and, if a variation were established, whether it had been properly

complied with by Respondent. It is thus apparent from the Applicant's letter of 5 August 2024 that the issue of variation was central to the determination of liability for the cracking and settlement of the apron slab. Counsel for the Applicant expressly acknowledged that such factual determinations could not reasonably or fairly be made until the evidential phase of the arbitration had been completed. It is contended that despite this, the arbitrator's preferred to prioritise remedial repairs over the continuation of the hearings and proceeded to issue the purported interim award notwithstanding the unresolved evidential issues, and that in doing so he fundamentally misunderstood, overlooked, or failed to engage with the evidence relating to the alleged contractual variation.

[43] Counsel for the Respondent submits that it was taken by surprise by the issuance of the purported interim award and was not afforded an opportunity to present its case or adduce its evidence before the decision was made. The issue of variation in the specifications governing the construction of the quay apron had not been fairly canvassed before the arbitrator, and procedural fairness required that the parties be given a proper opportunity to make submissions on that issue. It is argued that the arbitrator was obliged to determine the matter based on the evidence adduced by the parties, his analysis of that evidence, and the submissions made to him. His decision to issue a purported interim award without having heard the parties' evidence constitutes a serious breach of the rules of natural justice. In support of this position, reliance is placed on *Terna Bahrain Holding Co WLL v Al Shamsi*[9].

[44] Counsel further submits that, had the Applicant been given a proper opportunity to address the issue of variation, the arbitrator may well have reached a materially different conclusion and on this basis, it maintains that the purported interim award is unenforceable.

Right to a fair hearing:

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[9] [2012] EWHC 3283 (Comm); [2013] 1 Lloyd's Rep 86

[45] Furthermore, Counsel contends that the arbitrator breached the fair hearing rule by failing to apply his mind to the essential issues arising from the parties' presentation of their respective cases. It is submitted that this failure is a clear and, indeed, inescapable inference to be drawn from the contents of the purported interim award.

[46] Additionally, it is argued that for the arbitrator to have complied with the fair hearing rule, the reasoning adopted in the decision must have been one of which the parties had reasonable notice, and which bore a sufficient nexus to the manner in which the facts and issues were presented to him. The decision must therefore have fallen within the scope of the parties' submissions and evidential presentations. In the circumstances, the arbitrator failed to consider a material issue in dispute, in breach of the fair hearing rule and as a result, it is submitted that the alleged interim award has no legal effect and should not be enforced.

Interim-award provisional nature:

[47] Counsel avers that, in addition to the submissions already advanced, there is an independent and compelling basis upon which I should decline to enforce the purported interim award, namely its provisional nature. It is submitted that an "interim award" is conceptually distinct from a "partial award". While a partial award finally resolves a discrete part of the dispute, an interim award typically grants provisional relief and remains subject to later revision.

[48] It is further averred that an award is properly characterised as interim where it is liable to revision by the arbitral tribunal, either in the final award or by a subsequent decision dealing with provisional matters. Although the CCA provides for interim awards, the commercial arbitration rules recognise both interim and partial awards, underscoring the importance of identifying the precise nature and legal effect of the decision in question.

[49] It is therefore argued necessary to determine what was meant by the arbitrator's use of the term "interim award", and whether the decision granted provisional relief, finally determined a discrete issue, or served some other procedural function. It is submitted that the arbitrator's own statements and conduct support the conclusion that the

purported interim award was provisional in nature and inherently capable of being varied in due course. On this basis, it is contended that the purported interim award lacks finality and certainty and is therefore not capable of enforcement.

Application to set aside:

[50] Counsel for the Respondent moves for the purported interim award to be set aside on multiple grounds. It is submitted that the award is contrary to public policy; that the arbitral tribunal exceeded its jurisdiction and powers by granting relief on a major issue; that the award contains determinations on matters beyond the scope of the submission to arbitration, that the parties were denied an opportunity to present their respective cases and that no reasons were stated for the decision.

[51] It is contended that the principles governing the setting aside of arbitral awards on the ground of breach of natural justice are well established. First, the arbitrator must be disinterested and unbiased. Secondly, the parties must be given adequate notice of the case against them and a fair opportunity to be heard. A party seeking to set aside an award on this basis must demonstrate which rule of natural justice was breached, how it was breached, how the breach was connected to the making of the award, and how the breach did or could have caused prejudice.

[52] In the present case, it is submitted that the Applicant was denied its fundamental right to present its case and to respond to the case advanced against it. It was not afforded the opportunity to lead further evidence, to test the evidence adduced by the opposing side, or to advance further legal submissions, all of which could reasonably have affected the arbitrator's determination.

[53] It is further submitted that the issue of contractual variation was a critical factor in determining liability for the settlement and cracking of the apron slab. The arbitrator failed to evaluate the expert evidence on this issue before issuing the purported interim award. In doing so, he effectively usurped or supplanted the primary role of the experts in the dispute resolution process and substituted their technical assessments with his own independent views on liability for remedial works. This, it is argued,

amounted to an excess of jurisdiction and authority beyond the scope of the parties' referral to arbitration.

[54] Counsel for the Respondent advanced the proposition that there was a fatal failure in the arbitral process, such that the prospects of a fair arbitration were irretrievably lost. This failure could not be remedied because the sole arbitrator resigned on medical advice only one day after issuing the purported interim award. It is further contended that the purported award fell outside the range of decisions that a reasonable and fair-minded arbitrator could have made in the circumstances, as it represented a final and conclusive determination reached without consideration of all relevant evidence and arguments the parties wished to place before him. In this regard, it is submitted that the arbitrator approached the matter with a closed mind.

[55] For these reasons, it is contended that the purported interim award cannot be regarded as appropriate or lawful. The Court is therefore urged to exercise its inherent jurisdiction, to uphold the rule of law, and to protect the public interest by setting aside the award.

[56] Counsel also maintains that an essential component of procedural fairness is the obligation on an arbitrator to give reasons for his decision. The purported interim award fails to disclose the basis upon which the arbitrator reached his conclusions on the material issues. It is pointed out that the requirement to give reasons is mandatory under Rule 30 of the COMESA Arbitration Rules and reliance was placed on *Bremer Handelsgesellschaft mbH v Westzucker GmbH*[10] and *Dyna Technologies Private Ltd v Crompton Greaves Ltd*[11], both of which emphasise that arbitral awards must be reasoned to be regarded as valid and reasonable. In the circumstances, it is submitted that the purported interim award does not comply with Rule 30 of the COMESA Arbitration Rules nor Article 134 of the CCA.

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[10] (No2) [1981]
[11] (2019) 20 SCC 1

Beyond the scope:

[57] Reliance is placed on Article 134(2)(d) of the CCA, which provides that an arbitral award may be set aside where the arbitral tribunal has exceeded its jurisdiction or powers by determining matters not contemplated by, or not falling within, the terms of the submission to arbitration. Counsel for the Respondent argues that the arbitral decision went beyond the scope of what was permissible under the parties' submission to arbitration. It is submitted that the arbitrator lacked authority, in the matter referred to arbitration, to order specific performance of the contract and that the arbitrator's mandate was confined to determining monetary liability arising from the alleged settlement of the structure and the ingress of water into the service gallery. Accordingly, it is contended that the decision directing the Respondent to undertake remedial repairs amounted to relief beyond the scope of the submission to arbitration and thus constituted an excess of jurisdiction and powers on the part of the arbitrator.

Contrary to public policy:

[58] Finally, it is contended that the interim award is contrary to public policy. It is submitted that the arbitrator acted in breach of the rules of natural justice, departed from the agreed arbitral procedure, and exceeded the scope of the submission to arbitration. It is argued that the arbitrator erred in law by directing the Respondent to undertake remedial repairs at a stage when the issue of liability had not yet been determined.

[59] The Court is further invited to consider Rule 30(2) of the Commercial Arbitration Rules agreed by the parties, which provides that only final awards are binding on the parties and not interim awards. In any event, it is submitted that the purported interim award does not comply with the requirements of the CCA and is therefore unenforceable.

LAW AND ANALYSIS:

[60] The Applicant is seeking registration of a document dated 25 July 2024 ('the purported interim award') pursuant to Article 138 of the CCA which states as follows:

"(1) An arbitral award may be enforced only when it can no longer be contested before arbitrators.

(2) An award under an arbitration agreement may be registered by leave of the Supreme Court or a judge thereof and enforced in the same manner as a judgment or order to the same effect, and where leave is so given, a judgment may be entered in terms of the award.

(3) The court shall refuse the application if the award or its enforcement is contrary to public policy, or if the dispute was not capable of settlement by arbitration. A decision refusing the application may be subject to an appeal."

[61] To determine whether the purported interim award is capable of registration and enforcement it is important to first consider the background that led to the delivery of the purported interim award itself in order to properly grasp the intention of the parties and the arbitrator.

[62] I have considered both the arbitration proceedings of the 24 July 2024, and the purported interim award dated 25 July 2024. The document is reproduced below:

IN THE MATTER OF AN ARBITRATION

CASE NO 1 OF 2022

Between

Ile du Port Handling Services Limited — *Claimant*

And

Vijay Construction (Proprietary) Limited — *Respondent*

Interim Award

Replying to Mr Elizabeth

Arising from a certain consensus between Counsels Georges and Elizabeth of page 13 and 14 of Hearing of Wednesday 24th July 2024:

"Justice MacGregor: *To answer this, I do not need to wait for the hearing.*

Mr Georges: *No, you have enough information in front of you.*

Mr Elizabeth: *I agree, but when you talk to the experts next week, you will be able to make up your mind without the benefit of a hearing to make up your mind on this or even to guide the parties where to go.*

Justice MacGregor*: Let me try this. No matter or depending on which decision I make after hearing the experts I would prefer moving for the repairs giving priority over the hearings.*

Mr Georges: *Yes, repair will have to be done, the issue is who will have to pay for it.*

Mr Elizabeth: *Why don't we have a this is only a suggestion. Justice MacGregor, why don't we have an interim award on the limited issue after you consult with the experts and based on the information you have before you. On that limited issue you can make an interim award and then we will explore the other issues if not able to settle we will go to a hearing. On that limited issue, I think we can have an interim award.*

Mr Georges: *You can make an interim award at any point on any one issue and dispose of it. But this is basically a very simple issue."*

The Interim Award is as follows:

Vijay Construction (Proprietary) Limited, the Respondent, to undertake the present remedial repairs to the docks at its own costs. The said work to start within one month hereof subject to inspection by representative of both Respondent and Complainant. A time limit is to be agreed, failing which the Arbitrator will fix a time limit. A formal document to this effect to be drawn up.

Dated this 25th day of July 2024

Signed by the Arbitrator

[63] A close reading of the transcript of the proceedings of the 24th July 2024 demonstrates that the language employed by both the arbitrator and counsels were facilitative and directed towards compromise. During the hearing, it was agreed that remedial repairs of the apron was an immediate problem[12], that there needed to be some concession from both sides and therefore the parties agreed to work on an interim settlement pertaining to the remedial repairs of the apron[13]. The arbitrator proposed the drafting of a formal document which would sight the objectives, the conditions and time frame, which document would then be reviewed by experts before finalisation[14]. He repeatedly framed the exercise as one of guidance and process management, expressly stating that the objective was to *"explore possibilities,"*[15] while emphasising that expert input was still outstanding and necessary before any final position could be reached. The arbitrator made it clear that, should the parties fail to reach consensus, the matter would have to proceed to a full hearing[16], thereby acknowledging that no binding determination was being made at that stage.

[64] Moreover, the transcript is permeated with references to agreement, common ground, and what both sides accept. The discussions centred on developing a practical way forward for urgent remedial works, with responsibility, scope, and cost allocation expressly left open pending expert advice. The repeated use of terms such as *"proposal," "options,"* and *"framework"* underscores that the exercise was provisional and consensual in nature.

[65] In contrast, the language of the purported interim award adopts the form and tone of a concluded decision, thereby creating a material disconnect between what was discussed and what drafted by the arbitrator. The document is framed in the language of finality and purports to set out obligations and consequences in a manner

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[12] Page 1 line 17
[13] Page 3, line 17
[14] Ibid
[15] Page 5, line 17
[16] Page 12 line 12-14

characteristic of an interim award, without reflecting the conditionality, contingency, and ongoing negotiations that are evident from the transcript. The document does not record that its contents were subject to further expert determination, party approval, or potential rejection in favour of a continued hearing, despite those matters having been repeatedly emphasised during the proceedings.

[66] Counsel for the Applicant had proposed that the concessions be formalized in an interim order only after hearing expert evidence. The purported interim award was issued the following day before such evidence was heard which suggests it was not meant to be determinative but rather part of an ongoing proposal. Furthermore, the arbitrator resigned shortly after issuance of the document thereby depriving the parties of the opportunity to seek clarification of terms therein or the right to contest the order. As such. I find that procedural history read alongside the purported interim award itself, support the contention that it was a working document, subject to further expert input and party agreement and was not intended to be an 'interim award' capable of registration and enforcement. [17]

Is the document dated 25 July 2024 a valid award capable of registration and enforcement?

[67] The intention of the parties and arbitrator aside, I must consider whether the purported interim award presented for registration constitutes a valid award within the meaning of the Commercial Code. Both Counsels have addressed the Court extensively on the law governing arbitral awards, their enforcement, and the jurisdiction of this Court to register and enforce such awards, relying on a substantial body of jurisprudence in support of their arguments.

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[17] Page 6 line 19-20, 23-26

[68] Counsel's reliance on UK jurisprudence is in my opinion misplaced when transposed into the Seychellois statutory framework. The authorities operate within a materially different legislative context, where finality on an issue is sufficient to trigger enforceability through the court. In Seychelles, finality alone does not suffice, and the legislators have deliberately imposed an additional safeguard by requiring party consent before an interim award may be enforced. Accordingly, while the jurisprudence may be of limited persuasive value in identifying what constitutes an award as opposed to a procedural order, it cannot override or dilute the clear statutory requirements under our CCA.

Rule of law and issues of public policy:

[69] Article 130 requires the arbitrator is to make the award in accordance with the rule of law which is in my view is tied to the requirement on the court under Article 137(4) to examine whether the award is contrary to public policy. The two concepts are inextricably linked, each reinforcing the other in the administration of justice.

[70] It is well established within our jurisprudence that the concept of public policy is not static. In the case of *Monthy v Buron*[18] the learned Judge referred to Chloros and his examination of the concept, where it was stated:

"No attempt is made to define public policy for such a definition, assuming that it were possible, would have unduly restricted the discretion of the court and would have prevented the constant adaptation of this concept to the needs of a changing society." (Chloros supra, p. 17).

[71] In the case of *Waterside Ocean Navigation Co. v. International Navigation Ltd.*, 737 F.2d 150 (1984) [at p. 152], the United States Court of Appeals Circuit Court stated at

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[18] (SCA 6 of 2013) [2015] SCCA 15 (17 April 2015)

p. 152, made the determination that: "...the public policy.... should apply only where enforcement would violate our "most basic notions of morality and justice."

[72] In the landmark case before the Court of Appeal in V*ijay Construction (Proprietary) Limited) v Eastern European Engineering Limited*[19] , the court considered the concept of public policy in relation to the enforcement of arbitral awards and made reference to the case of *BCB Holdings Limited and another v The Attorney General of Belize* [2013] CCJ 5 (AJ) where it was said at para 57:

> "*While it is public policy that arbitral awards, and in particular foreign awards, should be enforced, it is also public policy that awards which collide with foundational principles of justice ought not to be enforced. These two facets of public policy may sometimes appear to be, but are really not, mutually inconsistent. When a municipal court considers whether to decline to enforce an award on public policy grounds, the court is not concerned with favouring or prejudicing a party to the arbitral proceedings. The court is concerned with protecting the integrity of its executive function. In the process, the court seeks simultaneously to guarantee public confidence in arbitral processes generally and to respect the institutional fabric of the country where the award is to be enforced.*"

[73] Where the courts uphold the rule of law, they give practical effect to public policy by ensuring that power is exercised lawfully and that rights are respected. Conversely, public policy finds its legitimacy in the adherence to the rule of law, for it is only through transparent and principled legal processes that the public confidence in the justice system is maintained. The arbitrator must identify and apply the relevant statutory provisions, legal principles, and binding jurisprudence governing the parties' rights and obligations including that each party must be afforded a full and fair opportunity to present its case. While the arbitrator retains procedural flexibility inherent in arbitral proceedings, I am of the opinion that the outcome must be legally reasoned and capable of withstanding scrutiny for errors of law, as opposed to a discretionary.

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[19] (SCA 28 of 2020) [2022] SCCA 58 (21 October 2022)

[74] An arbitrator acting in accordance with the rule of law should refrain from issuing determinations on contested matters without first hearing both sides and that of the evidence of experts to ensure that decisions, even those interim, are rational and based on evidence. In circumstances where the merits of liability or responsibility remain unresolved (as in the present case), adherence to the rule of law would in my mind require that interim measures, especially those affecting substantive rights, require the consent of the parties.

[75] Furthermore, the rule of law demands that parties understand what has been decided and what remains open to determination by the arbitrator. Therefore, the arbitrator must clearly identify whether the purported interim award constitutes an arbitral award versus a proposal for interim settlement, thereby avoiding ambiguity and preserving the parties' procedural rights.

[76] In the present circumstances, it is averred that the parties received notice of the document via email on the 26 August 2024 (one month after the purported order was issued) and the arbitrator handed in his resignation the following day without even having deposited the purported award with the Registrar. This left the parties with no avenue to query the status of purported interim award or to raise objections in challenge because upon his resignation the arbitration was adjourned without date pending the appointment of a new arbitrator. As such I find that there are clear contraventions of public policy and non-adherence to the rule of law that have arisen through this process.

Can the award still be contested before the arbitrator?

[77] Under Article 138(1), the court must satisfy itself that the award can no longer be contested before the arbitrator. This is not a matter of discretion but a jurisdictional prerequisite to the court's power to register the award. Whilst I agree that on the surface, it would appear that the Respondent is out of time to contest the award before the arbitrator, the circumstances of this arbitration can be distinguished from normal arbitration proceedings because of the sudden resignation of the arbitrator which deprived the parties of the ability to contest the purported interim award. Therefore, because of the lapses in fair trial and due process which have given rise to public

policy issues, I am of the view that the purported interim award can still be open to discussion before the new arbitrator.

Capacity of the arbitrator:

[78] I have identified another procedural issue which affects the registration and enforceability of the purported interim award. Article 132, which applies to both interim and final awards, requires not only for the president of the arbitral tribunal to give notice to each party of the award but also requires the arbitrator to deposit the award with the Registry of the Supreme Court.

[79] Pursuant to Articles 128 and 132, an award must be made while the arbitrator remains validly seized of the reference and deposited as part of that mandate. According to the affidavit in support of the motion and annexure MPL-4, the purported interim award was deposited on the 14 February 2025 which is over 6 months after the arbitrator's resignation. Clearly the arbitrators mandate had terminated and therefore he was *functus officio* and lacked any further capacity to do any further act in relation the arbitration, including to deposit any award with the Registry. This alone is in my view fatal to the registration of the document.

Requirement for consent:

[80] Even if the purported interim award was otherwise valid, Article 142 imposes an additional and explicit condition for the registration of interim awards, specifically:

*"**Article 142***

Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator may, if he thinks fit, make an interim award. Any reference in Title IX of Book I of this Code to an award shall include a reference to an interim award. ***Such an interim award may be registered by leave of the Supreme Court and enforced with the consent of the parties****. An arbitral tribunal shall in*

making a final award, be entitled to take into account an unreasonable refusal to consent to the registration and enforcement of such an interim award which leads to any increase of the loss suffered by a party."

[81] I have placed emphasis on the following sentence, *"Such an interim award may be registered by leave of the Supreme Court and enforced with the consent of the parties."* This sentence in my view creates two cumulative conditions, one of registration by leave of the Supreme Court and the other of enforcement with consent of the parties. The legislature expressly groups registration and enforcement when referring to consent by the use of the conjunctive "and". The phrase *"such an interim award"* must therefore be read as a whole. If consent were required only at enforcement, the provision would have in my view read "*registered by leave of the Supreme Court and, once registered, enforced with the consent of the parties"* and in the absence of such temporal sequencing, consent is a precondition to court involvement generally, not merely to execution of a registered award.

[82] Additionally, the final sentence of Article 142 provides that the arbitral tribunal may consider an unreasonable refusal to consent to the registration and enforcement of the interim award. If consent were required only at the enforcement stage, then a party could register an interim award unilaterally, despite the express contractual and consensual nature of interim relief in arbitration and the safeguard in the final sentence of Article 142 would be redundant. That way, the Supreme Court's retains its role as gatekeeper but the requirement for consent preserves party control over interim outcomes.

[83] It is evident from the proceedings both before the arbitrator and in the present motion before the court that no consent was given by the Respondent nor has it been implied or waived. Therefore, absent consent, I have no jurisdiction to register or enforce an interim award under Article 142, regardless of its merits.

CONCLUSION AND ORDER:

[84] Pursuant to Article 138(3), if the court determines that either the award or its enforcement is contrary to public policy, or that the dispute was not capable of settlement by arbitration, the court shall refuse the application. The mandatory language of this provision leaves no room for discretion once either ground is established. The court has no power to register an award that fails these tests, regardless of any other considerations.

[85] I am mindful of the settled position that Courts do not to sit in appeal over an award and ought not to interfere with an award merely because an alternate view on facts is possible. The court ordinarily intervenes only where rules of law or public policy have been violated, or where the arbitral process has been fundamentally unfair. Therefore, having addressed my mind to all the arguments presented and applying the relevant areas of the law, I am of the view that the application to register the purported interim award fails on multiple grounds.

[86] Firstly, the document was deposited with the Registry on 14 February 2025, more than six months after the resignation of the arbitrator and having resigned, he was functus officio and lacked jurisdiction to deposit any award.

[87] Furthermore, the document violates public policy under Article 137(4) and Article 133. It was issued without affording the parties a full opportunity to be heard, contrary to the requirements of natural justice. The parties had agreed that expert evidence would be heard before any interim order was made however; the document was issued the day after these discussions, before such evidence was received. This procedural irregularity rendered the arbitral process fundamentally unfair.

[88] Additionally, Article 142 requires the consent of both parties for registration and enforcement of an interim award. No such consent has been given and absent consent, the court lacks jurisdiction to proceed.

[89] Lastly, the Article 138(1) requires me to satisfy myself that the award can no longer be contested before the arbitrators considering the lapses of procedural fairness, the document remains contestable before the new arbitrator.

[90] For these reasons, the application for leave to register the purported interim award dated 25 July 2024 pursuant to Article 138 (2) is denied. The parties are encouraged to address the issue of remedial repairs if still pertinent through the revived arbitral process.

[91] A copy of this ruling is to be delivered to Justice Bernardin Renaud forthwith.

Signed, dated and delivered at Ile du Port on 6th February 2026.

Burian J

Natasha Burian SUPREME COURT SEYCHELLES Supreme Court Judge