

Comparative Analysis on Interim Measure in Arbitration Proceeding in Ethiopian Courts

Description

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Introduction

Due to the increase in commercial activity, having commercial law and arbitration law is important. Commercial activities sometimes result in commercial disputes. Most of the time commercial disputes use arbitration to solve their disputes. In the arbitration proceeding, the party may claim interim measure. Interim measures are grants of temporary relief aimed at protecting parties' rights pending final resolution of a dispute. Many legal systems recognize the procedural necessity of interim measures as a complement to final awards. Provisional measures may be even more crucial due to the special risks involved in international disputes. Often the efficacy of the arbitration process as a whole depends on interim measures that may prevent adverse parties from destroying or removing assets so as to render final arbitral awards meaningless. Interim measures are usually designed either to minimize loss, damage, or prejudice during proceedings, or to facilitate the enforcement of final awards.

This article will look into the interim measures taken first by Kenyan courts and then DIFC Courts. As a comparison a look on to the interim measures of Ethiopian Courts in arbitration proceedings will also be covered.

Arbitration Proceeding and Taking Interim Measure in Kenyan Courts

Kenya enacted an Arbitration Act in 1996 and amended in 2009. In addition Kenya has an arbitration tribunal in Nairobi called Nairobi Center for International Arbitration (NICA). However, an arbitration tribunal not exclusively working alone. Rather the local courts may assist the arbitration proceeding by giving interim relief before enforcement of award. Hence in the Act there is mandatory provision, particularly on intervention of local court. As a result, the court may take an interim measure as per section 70 of the Act. However such intervention of local court is limited. The grounds of intervention include:

- were the tribunal requests assistance in the taking of measures;
- to give interim measure orders of protection during arbitration;
- to determine the question of law on the application by parties.

The Arbitration Act provides that the tribunal can order any party to take whatever interim protection measures it considers necessary in respect of the subject matter of the dispute, with or without an ancillary order requiring the provision of appropriate security in connection with the measure. The types of relief are not specified in the Arbitration Act. The tribunal can order any party to provide security in respect of any claim or any amount in dispute, or order a claimant to provide security for costs (section

18, Arbitration Act). Under section 7, the court can grant interim orders to maintain the status quo of the subject matter of the arbitration before the tribunal has been constituted. This includes interim injunctions, interim custody or sale of goods. The High Court can also enforce the peremptory orders for protection given by the tribunal.

Arbitration Proceedings and Taking Interim Measures in Dubai Courts

Where an arbitration is seated in the Dubai International Financial Center (DIFC) , the DIFC Courts have power to award interim measures in support of arbitration proceedings pursuant to DIFC Arbitration Law No 1 of 2008.

The DIFC courts can be asked for an interim measures before or during the arbitration proceedings. These measures are not exhaustive but include the following:

- Maintain or restore the status quo pending determination of the dispute;
- Provide a means of preserving assets out of which a subsequent award may be satisfied or other means for securing or facilitating the enforcement of such an award;
- Take action that would prevent or refrain from taking an action that would likely cause current or imminent harm or prejudice to any party or to the arbitral process itself; or
- preserve evidence that may be relevant and material to the resolution of the dispute.”

As a result, the DIFC Courts’ powers to award interim measures in arbitration proceedings are wider in coverage. Thus where the arbitration proceeding is seated in the DIFC, the DIFC courts assume jurisdiction and exercise their supervisory power that includes giving interim remedies.

Arbitration Proceeding and Taking Interim Measure in Courts of Ethiopia

The arbitration proceedings and interim measures by Federal Courts of Ethiopia is governed by the Arbitration and Conciliation Working Procedure Proclamation No 1237/2021. The Proclamation specifically mentions provisional interim measures taken by courts on Article 9 of the Proclamation. It states as follows:

“With respect to matters falling under the arbitration agreement, the contracting parties may request the court interim measures to be taken before the arbitration proceeding is initiated or during the proceedings. This shall not be considered as violation of the arbitration agreement by the contracting parties and as intervention by the court.”

Here the law does not specify what is included in the interim measure taken by the Ethiopian Courts. It will be a matter for the court to decide based on the arbitration agreement. However, a list of interim measures to be taken by the Tribunals are exhaustively mentioned on Article 20(2) of the Proclamation.

On the other hand as per Article 27 of the Proclamation, the Courts have jurisdiction to issue interim relief irrespective of the place of arbitration of the arbitral tribunal. The seat of the arbitration tribunal need not be situated in Ethiopia to give interim remedies.

The question of whether the tribunal cannot exercise its powers to award interim measures by the courts of Ethiopia is not a requirement. The Court has the power to order interim relief in arbitration proceedings irrespective of the arbitral tribunal's ability to do so.

Conclusion

Parties to arbitration seated in the Dubai, Nairobi or Addis Ababa generally have access to the same interim relief by respective local courts in each jurisdiction. While the Dubai and Kenyan interim measures of their respective courts are listed, the Ethiopian courts are given general power to intervene to order interim reliefs. Ethiopia has joined through its progressive Arbitration and Conciliation Working Procedure Proclamation No 1237/2021 to the ranks of DIFC courts and Kenyan Courts in rendering interim measures and enforcing of those measures.

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Date Created

July 4, 2021

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