

THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

Claim No BVIHC (COM) 2024/0213

BETWEEN:

ABDUL KADIR AL MUHAIDIB & SONS COMPANY

Claimant

and

(1) DR MOAMENA KAMEL

(2) DR HEND EL SHERBINI

(3) HENA HOLDINGS LIMITED

Defendants

Appearances: Mr Robert Nader and Mr Gareth Timms, both of Forbes Hare, for the Claimant

Mr George Spalton KC, instructed by Mourant Ozannes, and with him, Mr Shane Donovan and Ms Marija Emberson, both of Mourant Ozannes, for the First and Second Defendants

Ms Sara-Jane Knock of Withers for the Third Defendant

2026: January 27 and 29
January 29

JUDGMENT

INTRODUCTION

- [1] **MITHANI J. KC (AG):** In this Claim (“the Claim”, “this Claim” or “these Proceedings”), issued on 3 July 2024, the Claimant is Abdul Kadir Al Muhaidib and Sons Company. I will refer to it in this judgment (“this Judgment” or “the Judgment”) as either the “Claimant” or “Abdul Kadir”.
- [2] The Defendants in the Claim are Dr Moamena Kamel (“Dr Kamel” or “the First Defendant”), Dr Hend El Sherbini (“Dr Sherbini” or the “Second Defendant”) and Hena Holdings Ltd (“Hena” or the “Third Defendant”). The Third Defendant takes a neutral stance in the Claim. It is, therefore, represented separately from the First and Second Defendants. I shall refer to the First and Second Defendants in this Judgment as “the Defendants”, which expression, where the context requires, will also include the Third Defendant.
- [3] I will refer to the Claimant and the Defendants collectively as “the Parties”.
- [4] The substantive relief that the Claimant seeks from this court (“this Court or the Court”) is set out in the amended Statement of Claim in the following terms:
- “(a) an order declaring, pursuant to Part 43.10 11-12 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (which applies by virtue of section 104 of the Act) and section 81 (1) and/or section 84 (1) of the Act that the arbitration award dated 20 October 2022 issued by the Cairo Regional Centre for International Commercial Arbitration ... in favour of the Claimant against, *inter alia*, the First and Second Defendants ... shall be enforceable against the First and Second Defendants in the same manner as if the award was [sic] a judgment or an order of the court that has the same effect;
 - (b) an order granting the Claimant permission to enforce the [said] award as to the amount remaining unpaid thereunder as if those amounts had been ordered to be paid by the First and Second Defendants to the Claimant pursuant to a judgment or an order of the Court;
 - (c) a freezing injunction against the First, Second and Third Defendants pursuant to section 17.1(1) and 51.2 (3) of the Eastern Caribbean Supreme Court Civil Procedural Rules (Revised Edition) 2023 and the appointment of a receiver over the First and Second Defendants' legal and beneficial interests in the shares of the Third Defendant pursuant to section 51.1(1) of the Eastern Caribbean Supreme Court Civil Procedural Rules (Revised Edition) 2023 ...”
- [5] In addition to the above definitions, I will, for the large part, adopt the definitions and abbreviations used in the documents included in the bundles lodged for the hearing on 27 and 29 January 2026 (“the Hearing”) for the purposes of this Judgment. Any underlined emphasis

appearing in this Judgment is my own. All other emphasis — whether in bold, italics, or otherwise — reflects the original emphasis as it appears in the source materials reproduced from the Bundles and remains that of the respective authors or creators of those documents.

BACKGROUND

- [6] The dispute between the parties has a long, complicated, and chequered history. It only needs to be referred to briefly for the purpose of this Judgment.

- [7] Abdul Kadir is a joint stock company incorporated in the Kingdom of Saudi Arabia. Dr Kamel and Dr Sherbini are Egyptian nationals and Professors of Clinical Pathology at Cairo University. Dr Kamel is the mother of Dr Sherbini. Abdul Kadir operates, among other things, as a private equity group with investments in medical, diagnostic, and analytical laboratory services in the Middle East and North Africa.

- [8] Al Mokhtabar Medical Laboratories Company (“Al Mokhtabar”) is a leading Egyptian medical testing company, incorporated as a joint-stock company in 2004. At all material times prior to 2012, its issued share capital was held exclusively by the First Defendant, the Second Defendant, and Mr Mahmoud Abdel Meguid (“MAM”), now deceased.

- [9] By 2007, Al Mokhtabar had undergone significant commercial expansion within Egypt and across North Africa. In order to support further growth and regional expansion, the Defendants and MAM sought external investment and entered into discussions with the Claimant.

- [10] On 20 November 2007, the Claimant, the First and Second Defendants, and MAM executed a Memorandum of Understanding (“the MOU”). The MOU contemplated a transaction under which the Claimant would acquire a 49% shareholding in Al Mokhtabar.

- [11] The MOU expressly provided that, as a condition precedent to its effectiveness and enforceability, the issued share capital of Al Mokhtabar would be increased to Egyptian pounds (EGP) 11,435,000, divided into 1,143,500 nominal shares, in accordance with the transaction structure set out in it.

[12] Clause 4 of the MOU provided that the aggregate purchase price for the proposed 49% shareholding was EGP 58 million, of which EGP 17 million was payable in cash upon execution of the MOU. The Claimant paid that sum shortly after signature.

[13] The MOU further contemplated the completion of legal and financial due diligence by the Claimant within 15 days of execution, and the execution of a definitive share purchase agreement within 45 days of the date of the MOU.

[14] The MOU stipulated that all dealings under it were governed by Egyptian law.

[15] Clause 25 of the MOU contained an arbitration clause providing for arbitration in Cairo under the rules of the Cairo Regional Centre for International Commercial Arbitration ("CRCICA"), with the award to be final and binding. The terms of clause 25 were as follows:

"This MOU and the relationship between the Parties shall be governed by, and construed in accordance with, the laws of the Arab Republic of Egypt. Any dispute arising out of or in connection with the interpretation or the execution of this Agreement, including any question regarding its existence, validity, interpretation, performance or termination, or any action taken hereunder, shall be settled by Arbitration, which may be initiated by either Party by sending the other Party a written notice according to the following conditions:

- a. The arbitration shall take place in Cairo, Egypt before the CRCICA according to the CRCICA [R]ules of arbitration applicable at the time of the dispute.
- b. The number of arbitrators shall be 3 (three). Each Party (being the Sellers as one party and [t]he purchasers is the other party) shall appoint one arbitrator, the chosen arbitrators shall appoint the third arbitrator (umpire).
- c. The language of the arbitration shall be English.
- d. The arbitral award shall be final, binding on the Parties and subject to no appeal."

[16] Following the execution of the MOU, disputes arose between the parties concerning the satisfaction of the condition precedent, the provision of due diligence materials, and the restructuring steps required to effect the proposed share transfer.

- [17] The Claimant maintained that it had fulfilled its contractual obligations under the MOU, including payment of the EGP 17 million, and asserted that the Defendants and MAM had failed to perform their obligations. The Defendants, by contrast, maintained that the condition precedent relating to the increase of Al Mokhtabar's share capital had not been fulfilled and that the MOU had therefore not become effective or enforceable.
- [18] On 13 May 2008, the Claimant wrote to the Defendants and MAM, asserting a breach of the MOU and threatening to commence arbitration proceedings pursuant to Clause 25.
- [19] On 20 May 2008, the Defendants responded in writing, stating that the MOU was not yet effective and that, as a consequence, the arbitration clause was likewise inoperative. They stated that any claims should be brought before the competent Egyptian courts.
- [20] Between June and July 2008, the Claimant served a series of judicial notices upon the Defendants and MAM. Those notices included express statements that the Claimant accepted what it described as the Defendants' waiver of the arbitration clause contained in the MOU.
- [21] From 2008 onwards, multiple proceedings were commenced in the Egyptian courts by both sides, arising out of or connected with the MOU and the proposed acquisition of shares in Al Mokhtabar.
- [22] In July 2008, the Claimant commenced proceedings seeking the appointment of a judicial receiver over Al Mokhtabar. That claim was eventually struck out on procedural grounds.
- [23] In April 2009, the Claimant commenced proceedings in the Cairo Economic Court seeking declarations about the validity and enforceability of the MOU and orders enabling it to acquire the 49% shareholding.
- [24] On 28 January 2010, the Cairo Economic Court held that the MOU constituted a valid contract but did not amount to an effective sale contract capable of specific performance. The Claimant's claim for transfer of shares was dismissed.

- [25] The Claimant appealed that decision to the Egyptian Court of Cassation (“CC”). On 24 May 2014, the CC dismissed the appeal, thereby confirming that the MOU was not enforceable as a share sale agreement.
- [26] In December 2012, notwithstanding the ongoing court proceedings, the Claimant commenced arbitration proceedings before the CRCICA pursuant to clause 25 of the MOU.
- [27] On 23 January 2014, the arbitral tribunal issued an award declining jurisdiction. The tribunal held that, by their correspondence and judicial notices in 2008, the parties had agreed to waive the arbitration agreement contained in the MOU.
- [28] Thereafter, further litigation ensued in the Egyptian courts, including proceedings in which MAM challenged the courts' jurisdiction on the basis of the arbitration agreement.
- [29] In December 2016, the Cairo Economic Court of Appeal held that MAM had not waived its right to arbitration and that the Egyptian courts lacked jurisdiction over certain claims. That decision was upheld by the CC in 2018.
- [30] On 13 February 2020, the Claimant commenced a second arbitration before the CRCICA against the First and Second Defendants, MAM, and others.
- [31] During the arbitration, it was discovered that MAM had passed away. Accordingly, his heirs were joined to the proceedings.
- [32] On 20 October 2022, the CRCICA tribunal issued an arbitral award (“the 2022 Award”). The tribunal asserted jurisdiction and held the Defendants and their heirs jointly and severally liable for breaching the MOU.
- [33] The tribunal rejected the Claimant's claim for specific performance and for lost profits, but awarded damages in the sum of approximately US\$23 million for loss of opportunity, together with costs.
- [34] The damages awarded under the 2022 Award were denominated in United States dollars. The tribunal did not find that the parties had agreed to pay compensation in a foreign currency.

- [35] The Defendants (and the heirs) commenced annulment proceedings before the Cairo Court of Appeal, challenging the 2022 Award on multiple grounds, including violation of Egyptian public order.
- [36] Those annulment proceedings were dismissed at first instance. The Defendants appealed to the CC.
- [37] On 8 May 2025, the CC allowed the appeal and set aside the 2022 Award in its entirety.
- [38] The CC held that the award of compensation in foreign currency violated the mandatory provisions of Egyptian Law governing foreign exchange, which the Court characterised as rules of public order. The CC further held that the MOU contemplated transactions in Egyptian pounds and that there was no agreement between the parties permitting compensation to be awarded in a foreign currency.
- [39] The CC's ruling constituted a final and binding judgment under Egyptian law, with no further avenue of appeal.
- [40] Prior to the CC's ruling, and without notice to the Defendants, the Claimant had applied to this Court for recognition and enforcement of the 2022 Award. On 22 May 2024, the Court granted interim *ex parte* orders recognising the award and imposing a worldwide freezing injunction against the Defendants' assets. The Defendants have made a separate free-standing application to discharge the freezing orders, i.e., an application that the freezing orders should be discharged even if the Court decides to grant the substantive relief sought by the Claimant in the Claim, and a free-standing application dated 17 June 2025 to dismiss the Claim.
- [41] Following the CC's decision, the Defendants requested that the Claimant consent to the discharge of the interim orders and dismissal of the enforcement proceedings. The Claimant declined to do so, maintaining that the CC's ruling should not be recognised or given effect in this jurisdiction.

ISSUES FOR DETERMINATION BY THE COURT, ANALYSIS AND DISCUSSION

- [42] Section 84 of the **BVI Arbitration Act 2013** gives effect to the New York Convention in the BVI. The effect of this provision is that such an award is enforceable by the BVI Courts and “is to be treated as binding for all purposes on the persons between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set-off or otherwise in legal proceedings in the Virgin Islands.”¹ However, s. 86(2) of the **Arbitration Act 2013** provides that “[e]nforcement of a Convention award may be refused if, *inter alia*, the person against whom it is invoked proves ... (f) ... (ii) that the award has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.” The Court has a discretion, therefore, to recognise an arbitral award even if the award has been set aside by a court of competent jurisdiction in the seat of arbitration.
- [43] There is no issue between the Parties that Egypt is a party to the New York Convention and that the 2022 Award is, therefore, a “Convention award” within the meaning of the **BVI Arbitration Act**.
- [44] It is also common ground between the Parties that the CC is a court of competent authority and that its judgment setting aside the 2022 Award is final under Egyptian law. In other words, the burden placed on the Defendants of proving that the 2022 Award has been set aside by a competent authority of the country (against which there is no further right of appeal in Egypt) in which the award was made is fully discharged. The effect of this is that the 2022 Award must be set aside unless the Court exercises its discretion not to do so under s. 86(2).
- [45] The only issue for determination by this Court is, therefore, whether the Court should exercise its discretion to enforce the 2022 Award notwithstanding its annulment at the seat of arbitration.
- [46] The discretion conferred by section 86(2)(f)(ii) is a narrow one. It does not permit the enforcing court to re-examine the merits of the annulment decision or to determine whether the foreign court correctly applied its own law.
- [47] It is well established in England and Wales that judgments of the courts of the seat — particularly apex courts — are ordinarily entitled to recognition, both as a matter of comity and because the New York Convention allocates supervisory authority primarily to the courts of the

¹ See s. 84(2) of the **BVI Arbitration Act**.

seat. Refusal to recognise a foreign annulment decision is justified only in exceptional circumstances, such as where recognition would offend basic principles of honesty, natural justice, or the fundamental public policy of the enforcing jurisdiction.

[48] Be that as it may, the parties have tendered conflicting expert opinions from former Egyptian judges on the tenability of the judgment rendered by the CC. For the avoidance of doubt, whilst I have duly considered the submissions of each expert with the utmost attention, I am constrained to observe that such evidence contributes little by way of material advancement to the respective positions of the parties. More particularly, the several animadversions directed by the Claimant's expert at the CC's determination are manifestly insufficient to warrant the invocation of this Court's discretion under s. 86(2) in the Claimant's favour.

[49] The burden of establishing such exceptionality rests firmly upon the Claimant.

[50] The applicable standard of proof is that which ordinarily governs civil proceedings, namely, proof on the balance of probabilities. Notwithstanding that the jurisprudential authorities cited by the Parties employ terminology of an elevated or restrictive nature, including, without limitation, the expressions "exceptional", "compelling" and "heavy burden", no enhanced or elevated standard of proof is thereby imposed or required.

[51] The weight of jurisprudential authority establishes certain legal propositions which, taken collectively, render it inappropriate and inconsistent with established principles for this Court to exercise its discretionary jurisdiction to grant recognition to the 2022 Award.

[52] It is of paramount importance — and emphatically no part of this Court's function — to supplant the decision of the CC with its own. Even assuming I were to find that the 2022 Award reached the correct conclusion for sound reasons, this Court possesses no jurisdiction to intervene by substituting the tribunal's determination for that of the CC. Such substitution would be impermissible, notwithstanding any preference I might hold for the expert evidence adduced by the Claimant over that proffered by the Defendant.

[53] In determining whether to exercise its discretion under s. 86(2) — which would entail assuming an appellate role over the judgment of Egypt's supreme court of record — the very notion that this Court might do so is anathema to every principle of legal practice and procedure with which

I am acquainted. This Court wields no jurisdiction akin to that of the European Court of Human Rights over decisions of superior UK courts, particularly an apex court such as the CC. Any attempt to assert such authority would not only contravene the public policy considerations binding upon me but would also violate the fundamental doctrine of finality in litigation. Just as I would regard it as a grave affront were a foreign court to review this Court's merits decision, so too it would be fundamentally wrong in principle for this Court to undertake such a review of the decision of a foreign court.

- [54] The expert evidence concerning the correctness of the determination reached by either the arbitral tribunal or the CC is of no material relevance to the present proceedings. What is determinative is that the CC rendered its decision with the concurrence of all members of the panel, supported by adequate and sufficient reasons.
- [55] Notwithstanding the Claimant's contention that the CC's decision was "bizarre" for the reasons articulated in paragraph 59 and subsequent paragraphs of Mr Nader's skeleton argument (on behalf of the Claimant), it would be inappropriate and exceed the proper bounds of judicial comity for a BVI Judge, possessing no specialised expertise in Egyptian law, to substitute his judgment for that of the Egyptian court. Such interference would constitute the practical effect of exercising discretion in the Claimant's favour in the instant matter.
- [56] In summary, and as previously articulated, the Claimant's expert evidence fails to establish that the decision of the CC was so fundamentally defective with respect to the principles of natural justice or procedural fairness as would warrant the exercise of this Court's discretion in the Claimant's favour.
- [57] This Court respectfully concurs with the Defendants' submission that, subject to the exceptionally narrow grounds upon which discretion may properly be exercised as examined herein, any attempt to "impugn" the decision of the CC would constitute an impermissible challenge to that determination, contrary to well-established principles founded upon the doctrine of issue estoppel. Alternatively, such action may constitute an abuse of process, as it is impermissible for a BVI court to permit a collateral attack on a prior decision of a court of competent jurisdiction, whether domestic or foreign.

[58] It has long been established that foreign decisions can give rise to issue estoppel, though the circumstances in which this will occur are narrowly defined. The relevant principles are set out in **Dicey, Morris and Collins on the Conflict of Laws ("Dicey & Morris")**,² as follows:

"14-036 It was established by a majority of the House of Lords in **Carl Zeiss Stiftung v Rayner and Keeler Ltd (No 2)**,³ that a foreign judgment could give rise to an issue estoppel, i.e. prevent a party from denying any matter of fact or law necessarily decided by the foreign court. For there to be such an issue estoppel, three requirements must be satisfied: first, the judgment of the foreign court must be (a) of a court of competent jurisdiction in relation to the party who is to be estopped, (b) final and conclusive and (c) on the merits; secondly, the parties to the English litigation must be the same parties (or their privies) as in the foreign litigation; and, thirdly, the issues raised must be identical. A decision on the issue must have been necessary for the decision of the foreign court and not merely collateral.¹⁵⁷ But Lord Reid emphasised that special caution is required before a foreign judgment can be held to give rise to an issue estoppel: English courts are unfamiliar with modes of procedure in many foreign countries, and it may be difficult to see whether a particular issue has been decided or that a decision was a basis of a foreign judgment and not merely collateral or obiter; and it might be unjust for a litigant to be estopped from putting forward a case in England because of a failure to do so in an earlier case of a trivial character abroad."

[59] In **Carl Zeiss Stiftung v Rayner and Keeler Ltd (No 2)**,⁴ Lord Reid, with whom, on this point, Lord Hodson, Lord Upjohn and Lord Wilberforce agreed, observed: ⁵

"I can see no reason in principle why we should deny the possibility of issue estoppel based on a foreign judgment, but there appear to me to be at least three reasons for being cautious in any particular case. In the first place, we are not familiar with modes of procedure in many foreign countries, and it may not be easy to be sure that a particular issue has been decided or that its decision was a basis of the foreign judgment and not merely collateral or *obiter*. Secondly, I have already alluded to the practical difficulties of a defendant in deciding whether, even in this country, he should incur the trouble and expense of deploying his full case in a trivial case: it might be most unjust to hold that a litigant here should be estopped from putting forward his case because it was impracticable for him to do so in an earlier case of a trivial character abroad, with the result that the decision in that case went against him. to see what were the grounds on which the West German judgment was based. ... It is clear that there can be no estoppel of this character unless the former judgment was a final judgment on the merits. But what does that mean in connection with issue estoppel? When we are dealing with cause of action estoppel it means that the merits of the

² **Dicey, Morris and Collins on the Conflict of Laws**, 16th Edition, 2022, Eds: Lord Collins of Mapesbury, Professor Jonathan Harris *et al.*

³ [1967] 1 A.C. 853.

⁴ [1967] 1 A.C. 853.

⁵ [1967] 1 A.C. 853 at 918.

cause of action must be finally disposed of so that the matter cannot be raised again in the foreign country...”

[60] The decision in **Carl Zeiss** has been applied in many subsequent cases. They include **The Sennar**.⁶

[61] In **The Sennar**, a cargo of groundnuts was shipped from Sudan to the Netherlands under a bill of lading containing an exclusive jurisdiction clause in favour of Sudanese courts. The ship's master fraudulently misdated the bill of lading (30 August 1973 instead of 7 September 1973), causing GfG, a buyer in a chain of contracts, to suffer losses when subsequent buyers rejected the documents. After the Dutch courts dismissed GfG's fraud claim on the ground that the exclusive jurisdiction clause applied, GfG's successors brought proceedings in the English Admiralty Court. The respondents applied for a stay of the proceedings, arguing the appellants were estopped by the Dutch court's decision.

[62] The House of Lords dismissed the appeal and upheld the stay, finding that:

- (a) a foreign court's decision is considered 'on the merits' for issue estoppel purposes when the foreign court determines it has jurisdiction to adjudicate on an issue and its judgment is final and conclusive (not subject to variation or reopening by that court or coordinate courts), even if appealable to a higher court;
- (b) the Dutch Court of Appeal's decision created an issue estoppel because it established facts, applied relevant legal principles, and concluded that the exclusive jurisdiction clause in the bill of lading applied to the appellants' claim — the same issue before the English court, regardless of whether the claim was framed in tort or contract; and
- (c) the stay was properly granted despite the fraud and potential procedural disadvantages in Sudan, as the claim had no connection with England but was connected to both the Netherlands and Sudan.

⁶ [1985] 1 W.L.R. 490, [1985] 2 All ER 104, HL.

[63] In **The Sennar**, Lord Brandon of Oakbrook set out the conditions that applied for an estoppel to operate:⁷

“Having regard to the decision of your Lordships' House in **Carl Zeiss-Stiftung v Rayner & Keeler Ltd (No 2)** ... two matters were not in dispute. The first matter is that, if an estoppel exists at all, it is that kind of estoppel which is known as *issue estoppel per rem judicatam*. The second matter is that, in order to create an estoppel of that kind, three requirements have to be satisfied. The first requirement is that the judgment in the earlier action relied on as creating an estoppel must be (a) of a court of competent jurisdiction, (b) final and conclusive and (c) on the merits. The second requirement is that the parties (or privies) in the earlier action relied on as creating an estoppel and those in the later action in which that estoppel is raised as a bar must be the same. The third requirement is that the issue in the later action in which the estoppel is raised as a bar must be the same issue as that decided by the judgment in the earlier action.”

[64] Quite apart from the application of issue estoppel, it may be that relitigating an issue already decided by a court of competent jurisdiction would constitute an abuse of process, even where the parties were not the same. That this is so, where the prior decision is of another court in England and Wales (or, in the present case, the BVI), is clear and has been established by a wealth of authority: see, by way of examples, **Hunter v Chief Constable of West Midlands**,⁸ **Johnson v Gore Wood & Co**,⁹ and **Ashmore v British Coal Corp**,¹⁰ including the summary of the relevant principles set out in **Re Queen's Moat House Plc, Secretary of State for Trade and Industry v Bairstow**.¹¹ Under this principle, the court will stay proceedings on the ground of abuse of process where to allow them to continue would be unfair to the defendant and bring the administration of justice into disrepute among right-thinking people.

[65] There is very little authority on the application of the abuse of process principle where the prior decision is of a foreign court. However, it is likely to be available in a case like the present one.¹² As Laddie J observed in **Iberian UK Ltd v BPB Industries Plc**,¹³ which concerned English proceedings raising competition issues previously determined by the European Commission, “whether expressed in terms of *res judicata* or abuse of process, it would be

⁷ [1985] 2 All ER 104 at 110.

⁸ [1982] AC 529.

⁹ [2002] 2 A.C. 1.

¹⁰ [1990] 2 Q.B. 338.

¹¹ [2003] EWCA Civ 321, [2004] Ch 1.

¹² See **Halsbury's Laws of England**, 5th Edn, Reissue, Volume 19, 2024, Conflict of Laws, para. 223 *et seq.*, para. 299 *et seq.*, para 308 *et seq.*, and para. 317 *et seq.*; and Dicey & Morris, Rule 46.

¹³ [1996] 2 CMLR 601.

contrary to public policy to allow persons who have been involved in competition proceedings in Europe to deny here the correctness of the conclusions reached there.”¹⁴

- [66] The upshot of all this is that a civil court will not permit a claim to be brought or continued, or an issue in it to be litigated against a defendant, or for a defendant to defend or continue to defend a claim or to litigate an issue in it, if to do so would amount to an abuse of its process or to obstruct the just disposal of the proceedings.
- [67] Mr Nader is correct that the authorities cited by Mr Spalton KC (who appeared on behalf of the Defendants) on issue estoppel, and by me on abuse of process, must be viewed through the prism of s. 86(2), which confers upon this Court a bespoke jurisdiction to recognise an arbitral award notwithstanding that it might otherwise be precluded from doing so on grounds of issue estoppel or abuse of process by virtue of annulment by a competent foreign court. In short, I accept Mr Nader's submission that neither issue estoppel nor abuse of process can constitute an insuperable bar where the Court, exercising its discretion under s. 86(2), is persuaded that the foreign court's decision — even that of an apex court such as the Egyptian Court of Cassation — is so fundamentally vitiated by breaches of natural justice or procedural fairness as to warrant recognition of the award. That said, the instant claim differs materially from the authorities invoked above. Whereas those cases turned on whether pursuing or maintaining local proceedings, following adjudication on the merits by a foreign court, engaged principles of issue estoppel or abuse of process, the present claim concerns direct recognition of the 2022 Award in the face of its annulment abroad. Here, s. 86(2) expressly empowers the Court to afford recognition notwithstanding such annulment, thereby contemplating circumstances in which an award set aside by a foreign court may nonetheless be enforced. Nevertheless, the venerable principle — entrenched across a century of English authority — that this Court must accord due respect and comity to the judgments of competent foreign courts remains of binding force.

¹⁴ [1996] 2 CMLR 601, at [72]. This principle has been recognised in a number of subsequent decisions: see, for example, **Betws Anthracite Ltd v DSK Anthrazit Ibbenburen GmbH** [2003] EWHC 2403 (Comm); **Intntrepreneur Pub Company (CPC) v Crehan** [2006] UKHL 38; **Enron Coal Services Ltd (in liq) v English Welsh & Scottish Railway Ltd** [2011] EWCA Civ 2; **Ryanair Holdings plc v Office of Fair Trading (Case No 1174/4/1/11)** [2011] CAT 23; **2 Travel Group plc (in liq) v Cardiff City Transport Services Ltd (Case No 1178/5/7/11)** [2012] CAT 19; **Kamoka v Security Service** [2017] EWCA Civ 1665; **Micula v Romania (European Commission intervening)** [2018] EWCA Civ 1801; and **Re Barings plc (No 3), Secretary of State for Trade and Industry v Baker (No 3)** [1999] 1 BCLC 226; affirmed on appeal: [1999] 1 W.L.R. 1985.

[68] It is a well-established principle of private international law that the mere misapplication or erroneous application of the governing foreign law by a competent foreign court does not, of itself, constitute a recognised ground upon which its judgment may be impeached or denied recognition or enforcement in this jurisdiction, even where such error is both manifest and incontrovertible. English Law (and, by analogy, BVI Law) draws a clear distinction between, on the one hand, review of the merits of a foreign decision and, on the other, the limited and exhaustively defined defences to recognition founded on fraud, breach of natural justice, or contravention of domestic public policy. A mistake of foreign law, however stark, goes only to the merits and falls squarely within the exclusive province of the foreign court whose judgment is sought to be relied upon. As has been authoritatively affirmed, a foreign judgment is not impeachable merely on the footing that the foreign court has misdirected itself as to the proper construction or application of its own law. The position could not have been explained in clearer terms than in the judgment of the English Court of Appeal in **Adams v Cape Industries Plc**:¹⁵

“It is well established that a defendant, shown to have been subject to the jurisdiction of a foreign court, cannot seek to persuade our court to examine the correctness of the judgment whether on the facts, or as to the application by the foreign court of its own law or, when relevant, of the law of this country. A foreign judgment is not impeachable merely because it is ‘manifestly wrong’... In any such case, it could be said that there has been a breach of natural justice, but it is not a type of breach which our courts will consider relevant. In effect, their attitude is that the only way in which the defendant can seek to correct an error of substance made by the foreign court is by using such means for correction of error as may be provided under the foreign system.

This being the position where there has been an error of substance, it would, in our judgment, be anomalous if our courts were obliged wholly to disregard the existence of a perfectly good remedy under a foreign system of procedure in considering whether the defective operation of that procedure has led to a breach of natural justice

Since the ultimate question is whether there has been proof of substantial injustice caused by the proceedings, it would, in our opinion, be unrealistic in fact and incorrect in principle to ignore entirely the possibility of the correction of error within the procedure of a foreign court which itself provides fair procedural rules and a fair opportunity for remedy. The court must, in our judgment, have regard to the availability of a remedy in deciding whether in the circumstances of any particular case substantial injustice has been proved. However, the relevance of the existence of the remedy and the weight to be attached to it must depend upon factors which include the nature of the procedural defect itself, the point in the proceedings at which it occurred and the knowledge and means of knowledge of the defendants of the defect and the reasonableness in the circumstances of requiring or expecting that they made use of the remedy in all the particular circumstances.”

¹⁵ [1990] Ch. 433 at 569-570.

[69] The principles governing the circumstances in which this Court will be prepared to exercise its discretion to recognise an award that has been set aside by a foreign court are drawn very narrowly. The principles are summarised in the following paragraphs of Dicey & Morris (disregarding the footnotes in those passages):

“16-112 ... the question has arisen as to whether the court in which enforcement is sought may enforce an award notwithstanding that it has been set aside by the court of the seat of the arbitration. The prevailing view is that the courts of the seat are best placed to decide on the setting aside of an award, and that the courts of other countries should, in general, respect the decisions of the court of the seat. In some countries (notably France), the view has been taken that the enforcing court, not being bound to follow the decision of the court of the seat, should not do so, respecting the international character of the arbitral award itself. These decisions rest upon the power of the enforcing court under Art.VII(1) of the Convention to apply laws which are more generous to enforcement than the rules of the Convention.

16-113 Even if the award has been set aside by a competent authority, the English court may recognise or enforce the award if the judgment setting aside the award would be impeachable for fraud or as being contrary to natural justice, or otherwise contrary to public policy ...”

[70] In **Malicorp Ltd v Government of the Arab Republic of Egypt**,¹⁶ the claimant, Malicorp Limited, was an entity incorporated in England and Wales. Malicorp entered into a written agreement with the first defendant, the Government of the Arab Republic of Egypt ("ARE"), concerning the design, construction, and subsequent operation of a new airport facility in ARE for a period of 41 years. The agreement contained an arbitration clause that provided for disputes to be resolved by the Cairo Regional Centre for International Commercial Arbitration. In 2004, Malicorp initiated arbitration proceedings by submitting a request to the Cairo Centre. An arbitral award was purportedly made in favour of Malicorp ("the Cairo award"). The Cairo award bore the signatures of two arbitrators, the third having notified by correspondence that a court decision (the Administrative Court decision) required him to suspend his participation in the arbitration. The Cairo award determined that the first defendant was liable to pay Malicorp US\$10 million in damages for loss of profit, together with interest and costs. In 2012, the Cairo Court of Appeal set aside the Cairo award ("the 2012 Cairo Court of Appeal decision"), which decision remained subject to a pending appeal. Malicorp applied for enforcement of the Cairo award pursuant to section 101(2) of the Arbitration Act 1996 of England and Wales, which is

¹⁶ [2015] EWHC 315 (Comm).

framed in similar terms to the **BVI Arbitration Act**. Permission to enforce was granted. ARE subsequently applied to set aside the grant of permission.

- [71] The central issue for the court to determine was whether effect should be given to the 2012 Cairo Court of Appeal decision setting aside the Cairo award. ARE further contended that the award ought to be set aside on the additional ground that damages had been awarded pursuant to art. 142 of the Egyptian Civil Code, a provision which had not been pleaded by Malicorp. It was common ground between the parties that the Cairo award constituted a New York Convention award, with the consequence that enforcement could only be refused if the circumstances fell within the parameters of sections 103(2) to 103(4) of the 1996 Act.
- [72] Walker J held that the use of the permissive expression "may" in section 103(2) conferred upon the court a discretion to enforce an award notwithstanding that it had been set aside by a decision of a competent authority within the meaning of section 103(2)(f). His Lordship held that it would not be appropriate to exercise that discretion if, applying general principles of English private international law, the setting-aside decision was one to which the court would give effect. That constituted the preferred approach. There could be no doubt that the grant of remedies on a basis which had neither been pleaded nor argued was capable of falling within the ambit of section 103(2)(c) of the 1996 Act.
- [73] Applying the preferred approach articulated above, there was no scope, as a matter of discretion, to give effect to the Cairo award where it was established that a setting-aside decision of the supervisory court satisfied the test for recognition. The circumstances fell within section 103(2) of the Act, and the court's discretion ought to be exercised so as to decline enforcement of the Cairo award on the grounds that it had been set aside by the 2012 Cairo Court of Appeal decision and, as a matter of fact, the Cairo award had granted remedies to Malicorp on a basis which had neither been pleaded nor argued before the tribunal. The award of damages pursuant to art. 142 must have come as a complete surprise to ARE. The tribunal's failure to ensure that ARE had received prior notice of the relevant matters could only be characterised as a serious breach of the principles of natural justice. The gravity of the breach and the severity of its consequences were such that the discretion could not properly be exercised in favour of enforcing the award notwithstanding the breach.

[74] Setting aside the enforcement order, Walker J said:¹⁷

“[21] (1) that the word ‘may’ in s 103(2) of the 1996 Act confers a discretion on this court to enforce an award even though the award has been set aside by a decision (‘the set aside decision’) of a court constituting a competent authority within s 103(2)(f); and

(2) it would not be right to exercise that discretion if, applying general principles of English private international law, the set aside decision was one which this court would give effect to.

[22] Thus, the only question becomes whether the set aside decision was one which this court would give effect to. In this regard Malicorp objects that the decision should not be given effect to because (1) it was tainted by bias, (2) it was contrary to natural justice and the Egyptian Court deliberately misapplied relevant Egyptian law and (3) the grounds on which it set aside the Cairo award were wrong and misconceived.

...

[25] Malicorp’s objection (3) can be dealt with shortly. As observed by [ARE], an assertion that a foreign judgment is ‘wrong’ is not a sufficient basis to refuse to recognise it. When considering whether to recognise a foreign judgment this court acknowledges that the determination of foreign law is a matter for the foreign court. Thus evidence relied on by Malicorp that the 2012 Cairo Court of Appeal decision is wrong does not address the relevant issues. As [ARE] points out, there is no suggestion in that evidence that the 2012 Cairo Court of Appeal decision is perverse. Allegations that there was a failure ‘to take account of’ Malicorp’s submissions merely because those submissions were not repeated in the judgment, or that the judgment gave reasons which were ‘insufficient and contradictory’ do not assist Malicorp in this regard.

[26] As to objections (1) and (2), the detailed matters relied on are in my view insufficient to make good these complaints. The central assertion made by Malicorp is that the judges responsible for the 2012 Cairo Court of Appeal decision were guilty of pro-government bias. Such a claim cannot be accepted by this court without positive and cogent evidence: see **Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd** [2011] UKPC 7, para 97 and **Yukos Capital S.a.r.L v OJS Oil Company Rosneft (No 2)** [2012] EWCA Civ 855 para 73. A report of Professor Stilt is relied on by Malicorp as providing the necessary evidence. While I do not criticise Professor Stilt, I have no doubt that the evidence she has been able to assemble does not approach the high level of cogency that is required. It does not go beyond generalised, anecdotal material. In so far as Malicorp places reliance on a newspaper report concerning the team working on behalf of the government, the report does not on its face say that the relevant judges were part of the team, and there is no apparent basis to think that this was implied by the report. Reference is made by Malicorp to a letter from the President of the Cairo Court of Appeal to the Public Prosecutor concerning suspension of the Cairo arbitration while criminal proceedings were on foot, but in so far as complaint is made about this letter nothing in the letter is identified to support any such complaint.

¹⁷ Ibid, at [22] and [22].

- [27] I add a particular comment in so far as Malicorp relies upon a claim that the Cairo Court of Appeal judges who handed down judgment were not on strike during a constitutional dispute between then President Morsi and some of the judiciary. In my view this claim, even if true, could not possibly warrant the serious allegation made.
- [28]. The preferred approach which I have described above applies, in the present context, well established principles as to the recognition of foreign judgments. It does not seem to me that they leave room, as a matter of discretion, to give effect to the Cairo award once it is established, as here, that a set aside decision of the supervisory court meets the tests for recognition. If, however, there were such a further discretion I would not exercise it in favour of Malicorp. In so far as Malicorp relies on comments in the ICSID 2011 decision which are said to be supportive of Malicorp's case on the merits, I observe that the ICSID 2011 decision was concerned only with jurisdiction and whether there had been expropriation. In so far as Malicorp suggests that the present case should be adjourned to await the outcome of its appeal to the Court of Cassation, I do not consider that there is good reason to depart from the normal approach under which the 2012 Cairo Court of Appeal decision is, unless and until overturned by the Court of Cassation, treated as a final decision."

[75] Walker J went on to say:

- "31 There can in my view be no doubt that a grant of remedies on a basis which was neither pleaded nor argued will be capable of falling with this subsection. Nor can there be any doubt that under principles of English private international law the test as to ability of the party to present its case involves an application of relevant English principles as opposed to those of Egypt or anywhere else: see **Cukurova Holdings AS v Sonera Holding BV** [2014] UKPC 15, para 32.
41. In these circumstances I have no doubt whatsoever that the award of damages under article 142 must have been a complete surprise to [ARE]. So, too, must have been the basis upon which such an award was made – apportioning to the Republic 10% responsibility for the relevant mistake, and allowing as the major part of the award a substantial sum for loss of profit. It would have been astonishing, if there had been any suggestion that this was in contemplation, that [ARE] would fail to protest that the tribunal ought to make a finding on its case on fraud rather than allocate responsibility on the footing of a good faith mistake on the part of Malicorp. It would similarly have been astonishing, if there had been any suggestion that damages in place of reinstatement were contemplated, that [ARE] would fail to protest that such damages could not properly incorporate an element for loss of profit. There were undoubtedly strong arguments for [ARE] to advance in these respects among others. The notion that, in the absence of any mention of these matters, [ARE] could and should have anticipated the basis of proceeding adopted in the Cairo award, is to my mind manifestly repugnant to elementary principles of fairness.

42. The failure of the tribunal to ensure that [ARE] had warning of these matters can only constitute a serious breach of natural justice. In so far as I have any discretion to enforce the award despite that breach, I decline to do so: the breach is too serious, and the consequences for [ARE] are too grave. It is suggested that the hearing be reconvened so that Mr Soliman can give evidence and be cross-examined. I decline to take this course: for the reasons given above, Mr Soliman's statement cannot assist Malicorp."

[76] Mr Spalton KC is right to submit that **Malicorp** bears close factual similarity to the instant case. That said, material distinctions remain, and the decision under s. 86(2) being discretionary, the Court must assess the particular circumstances before it independently, drawing guidance from but not being bound by prior authorities.

[77] As already articulated, mere legal errors, even if serious, do not meet that threshold. The relevant principles are summarised in the following excerpts of Dicey & Morris (disregarding the footnotes in those passages):

"14–159 In a celebrated passage in his judgment in **Pemberton v Hughes**¹⁸ (a case on the recognition of a foreign divorce decree), Lord Lindley observed: 'If a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter with which it is competent to deal, English courts never investigate the propriety of the proceedings in the foreign court, unless they offend against English views of substantial justice.' This passage refers to irregularity in the proceedings, for it is clear that a foreign judgment, which is manifestly wrong on the merits or has misapplied English law or foreign law, is not impeachable on that ground. Nor is it impeachable because the court admitted evidence which is inadmissible in England or did not admit evidence which is admissible in England or otherwise followed a practice different from English law. In **Jacobson v Frachon**,¹⁹ Atkin L.J., after referring to the use of the expression "principles of natural justice" said: 'Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court.' Questions of natural justice should at least ordinarily be addressed to the specific circumstances under which the foreign judgment was obtained, rather than the features of the foreign legal system as a whole.

14-161 A mere procedural irregularity would not offend English concepts of substantial justice. In **Adams v Cape Industries Plc** [supra] the

¹⁸ [1899] 1 Ch. 781 at 790.

¹⁹ (1927) 138 L.T. 386, CA.

foreign judgment was for damages in default of appearance, and notice was given to the defendants of the application for a default judgment on an unliquidated claim. Under United States law (as under English law) the assessment of damages is effected (even in cases of default) by the court, but the United States judge did not hold any form of hearing, and the judgment was not based on an objective assessment by the judge of the evidence. The Court of Appeal did not decide that a lack of judicial assessment of damages is per se a breach of natural justice; but it is a breach where the foreign legal system contains provision for judicial assessment and the judgment debtor therefore has a reasonable expectation that there will be a judicial assessment.”

- [78] In the present case, the CC set aside the 2022 Award on the ground that it violated Egyptian public order by awarding damages denominated in United States dollars in circumstances where, under the mandatory provisions of Egyptian law, transactions and obligations were required to be denominated in Egyptian pounds unless specific statutory exceptions applied. The CC identified the relevant statutory framework, including art. 212 of the Central Bank of Egypt and Banking Sector Law no. 194 of 2020 (“CBE”), characterised the relevant provisions as mandatory rules of public order, and explained why the 2022 Award was incompatible with them.
- [79] The CC further considered and rejected the contention that Egypt’s obligations under the bilateral investment treaty with the Kingdom of Saudi Arabia displaced or overrode those mandatory rules.
- [80] The Claimant advances a number of criticisms of the CC’s reasoning. These include contentions that the court misconstrued Egyptian currency regulations, wrongly elevated regulatory provisions to matters of public order, failed to properly apply the bilateral investment treaty, and exceeded its annulment jurisdiction by engaging in a merits review.
- [81] The position of the Claimant is set out in the written evidence of its expert, Dr Hassan El-Badrawy. The Claimant summarises Dr El-Badrawy’s findings at para. 72 onwards of its skeleton argument.
- [82] In short, the Claimant says this:
- (a) Dr El-Badrawy holds impressive credentials, including being an arbitrator at the Cairo Regional Centre for International Commercial Arbitration; a member

of the legislative committee that amended Egyptian Arbitration Law No. 27 of 1994; a former Vice President of both the CC and Supreme Constitutional Court; and a former Assistant Minister of Justice for Legislation; and

- (b) Dr El-Badrawy's central conclusion is that the CC's decision to set aside the 2022 Award is fundamentally flawed. He characterises it as: (i) "manifestly wrong"; (ii) conflating currency transaction laws with arbitral awards of damages; (iii) contradicting the Court's own jurisprudence; (iv) violating established principles that annulment courts should not review merits; (v) constituting "an abomination of justice"; (vi) offending "basic principles of honesty, natural justice"; and (vii) being "tainted by bias" and, thus, warranting impeachment.

[83] More specifically, Dr El-Badrawy states:

- (a) that the court fundamentally misunderstood art. 212 of the Central Bank of Egypt Law No. 194 of 2020. The CC interpreted art. 212 as prohibiting awards in foreign currency. However, Dr El-Badrawy states that art. 212 was intended to liberalise foreign currency transactions, not restrict them; therefore, the court was incorrect in interpreting art. 212 in that way. Indeed, Dr El-Badrawy served on the committee that drafted this law, and confirms its purpose was to align Egyptian banking law with international standards. He maintains that art. 212 only applies to domestic transactions for goods and services. It does **not** apply to arbitral awards of damages/compensation. Dr El-Badrawy cites the CC's authority (Challenge No. 1249 of JY 91, June 2023), confirming that art. 212 restrictions apply only to buying and selling goods and services, not to compensation awards. He also refers to a September 2024 CC criminal decision, which further clarified that art. 212 only prohibits foreign currency transactions through unlicensed entities, not through proper channels and to art. 42(e) of the Executive Regulations of the CBE, which expressly states "goods and services required to be transacted in Egyptian Pounds do not include securities, other financial instruments and their returns" — yet the CC decision disregarded this provision entirely.

- (b) The CC selectively quoted from art. 17 of the Egypt-Saudi Arabia Bilateral Investment Treaty ("BIT") which the CC was legally bound to apply as a result of the operation of art. 151 of the Egyptian Constitution, while omitting crucial provisions, which provided, *inter alia*, that "No restrictions of any kind shall be imposed on the investor's right to collect and repatriate the principal capital, profits, returns, compensations, or any other rights resulting from the investment. Such transfers shall be made in the currency in which the capital was introduced or in any other convertible currency..." and that "the compensation shall be in the same currency as the investment or any other convertible currency."
- (c) The payment under the MOU was actually made in USD (not Egyptian Pounds), making a USD award entirely consistent with the BIT's requirement that compensation be in the investment currency.
- (d) This selective omission of treaty provisions "raise[s] serious concerns regarding adherence to fundamental principles of fairness, natural justice, and impartiality and may suggest an outcome-driven departure from the proper application of the treaty."
- (e) The disregard of the BIT alone meets the criteria for this Court to enforce the 2022 Award despite the set-aside.
- (f) Egyptian law provides an exhaustive list of grounds for annulment under art. 53 of the Arbitration Law, which does not include: (i) re-evaluation of legal reasoning; (ii) review of factual findings; and (iii) alleged misapplication of law, citing academic opinion to the effect that "the annulment judge is not entitled to review the arbitral award in order to assess its appropriateness, evaluate the arbitrators' judgment, or determine whether their understanding of the facts in dispute was correct or mistaken, nor to assess whether the applicable law was violated or misapplied."
- (g) Dr El-Badrawy cites multiple CC decisions establishing, *inter alia*: (i) that the determination of compensation elements falls within the tribunal's authority;

and (ii) the errors in fact-finding or compensation assessment are not grounds for annulment, citing authority (Challenge No. 12262 of JY 90 (June 2021) to the effect that “the judge of the annulment lawsuit does not possess the right to review the arbitration award to assess its suitability or monitor the arbitrators' good judgment... because even if they were wrong, their error does not constitute a reason to nullify their award, given that an nullity suit differs from an appeal by way of appeal.”

[84] Dr El-Badrawy further states that the CC decision violates:

- (a) art. V(1)(c) of the New York Convention;
- (b) corresponding requirements of Egyptian Arbitration Law; and
- (c) “widely accepted binding principles of law” regarding “finality and non-intervention in the merits of arbitral awards”

[85] Dr El-Badrawy’s overall conclusion is that the CC decision: (a) is “tainted with injustice”; (ii) violates Egypt’s arbitration framework; (iii) is “flawed and fails to satisfy the standards required to set aside an award”; (iv) is “manifestly wrong”; (v) is non-compliant with domestic concepts of public policy; (vi) offends “basic principles of honesty, natural justice”; (vii) will have “extremely negative effects on Egypt’s position as a pro-arbitration jurisdiction”; and, most critically, (viii) “should be impeached for bias” — meaning that it is so perverse it cannot have been arrived at in good faith, thus meeting the **Maximov** test [i.e., **Maximov v Open Joint Stock Company “Novolipetsky Metallurgichesky Kombinat”**]²⁰ for enforcement.

[86] Leaving aside the allegation of bias, which I address separately, none of the matters relied upon by the Claimant as impugning the decision of the CC engages the discretion of this Court so as to justify interference with that decision.

[87] Even if the substance of Dr El-Badrawy’s report were accepted in full, it would not provide a basis for recognising the 2022 Award. This Court is not entitled to sit in appeal over the CC, nor to substitute its own understanding of Egyptian law or procedure for that of Egypt’s highest court.

²⁰ [2017] EWHC 1911 (Comm),

- [88] Save for the allegation of bias, I am unable to see how the matters identified by the Claimant could amount to breaches of natural justice or procedural fairness of such gravity as to warrant recognition of the award. At its highest, the Claimant's case is that the CC fundamentally misunderstood the applicable law and reached an erroneous conclusion. But the CC, as Egypt's apex court, has final authority over questions of Egyptian law, and it is not the function of this Court to review the correctness of its legal conclusions.
- [89] The procedural criticisms advanced by the Claimant likewise provide no proper basis for interference, including the contention that the CC's reasons were inadequate. I can discern no procedural or other deficiency in the judgment — such as a failure to give reasons sufficient to explain the decision — that would justify intervention by a “superior court of record” of England and Wales, even if the CC decision were that of an “inferior court of record” in England and Wales. This Court must be astute not to assess the legal or procedural framework of a foreign judgment by reference to domestic standards. That is so notwithstanding that this jurisdiction, like the United Kingdom, is subject to the ECHR (see **Reservations and Declarations for Treaty No. 005 – Convention for the Protection of Human Rights and Fundamental Freedoms**, including the letter of the UK Permanent Representative dated 19 November 2010 confirming that the BVI is subject to the Convention).
- [90] To adopt the approach urged by the Claimant would risk drawing this Court into the role of an appellate tribunal over decisions of foreign courts, applying the standards of review applicable in this jurisdiction. No such role is contemplated or can be applied in this jurisdiction. The Claimant does not allege that it was denied the opportunity to be heard in the annulment proceedings, nor does it allege procedural irregularity, corruption, lack of judicial independence, or any comparable matter capable of engaging the discretion under s. 86(2).
- [91] The CC's judgment is reasoned, addresses the central issues advanced, and applies principles derived from Egyptian statutory law. Disagreement with the outcome, or with the reasoning adopted, does not establish a breach of natural justice or a denial of justice, even if the reasoning would be regarded as insufficient by the standards applied in other jurisdictions.
- [92] I accept Mr Nader's allegation that “bias” can constitute a sufficient basis to “interfere” with the decision of the CC by recognising the 2022 Award.

- [93] The decision in **Maximov v Open Joint Stock Company “Novolipetsky Metallurgichesky Kombinat”**,²¹ on which Mr Nader relies concerned an application by Maximov to enforce a Russian arbitration award in England. The award, issued by the International Commercial Arbitration Court (ICAC) in Russia, concerned a share purchase agreement and awarded Maximov a substantial sum. However, the award had been set aside by the Moscow Commercial Court, with that decision upheld on appeal through the Russian court system. The central question for the court was whether the English court should refuse to recognise the Russian judgments that set aside the award on grounds of bias or perversity.
- [94] Sir Michael Burton, sitting as an additional Judge of the English High Court, confirmed that the claimant faced a high hurdle before the court would refuse to recognise the Russian judgment. The established principles were that: (a) simply showing that a foreign court decision is manifestly wrong or perverse is not sufficient; (b) the decision must be so wrong as to be evidence of bias, or such that no court acting in good faith could have arrived at it; (c) there must be evidence that the decision offends basic principles of honesty, natural justice, and domestic concepts of public policy.
- [95] Maximov argued that bias should be inferred from the perverse nature of the Russian court's conclusions. This included: (a) the finding that corporate disputes were not arbitrable; (b) the categorisation of the purchase price claim as a corporate dispute; and (c) alleged failures by arbitrators to disclose circumstances that could raise doubts about their impartiality.
- [96] The Judge held that there was no evidence of bias and, despite criticism of the Russian courts' reasoning, found that the set-aside decision was not so "extreme and perverse" that it could only have been reached as a result of actual bias. The application to enforce the award was, therefore, refused. The court emphasised that, absent cogent evidence that the set-aside decision offended basic principles of honesty and domestic public policy, the English court would not enforce an award that had been validly set aside at the seat of arbitration.
- [97] The cases on bias include **R. v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte (No. 2)**,²² **Porter v Magill**,²³ **Halliburton Co v Chubb Bermuda Insurance**

²¹ [2017] EWHC 1911 (Comm).

²² [1999] 2 W.L.R. 272, HL.

²³ [2001] UKHL 67.

Ltd;²⁴ Locabail (UK) Ltd v Bayfield Properties Ltd;²⁵ Ansar v Lloyds TSB Bank Plc;²⁶ Otkritie International Investment Management Ltd v Urumov;²⁷ and Re A (a child) (Family Proceedings: Disclosure of Information).²⁸

- [98] Given the extensive body of jurisprudence on bias and the consistent application of the established principles, it is unnecessary to undertake a detailed analysis of the authorities cited above or others on the subject. However, the circumstances of this case disclose no basis for apparent bias, still less actual bias.
- [99] The Claimant's contention on this issue amounts to little more than an assertion that the CC's decision was tainted by bias because it misconceived the legal basis for its ruling. As the authorities on bias demonstrate, this is manifestly insufficient to establish bias. Indeed, I cannot discern any basis upon which, had the CC been an "inferior court of record" in England and Wales, its decision to set aside the award could have been successfully challenged by way of judicial review in the English High Court: see **R (Sivasubramaniam) v Wandsworth County Court**.²⁹
- [100] I accept that the public policy of this jurisdiction strongly favours the enforcement of arbitral awards: see, for example, **Kenworth Industrial Limited v Xin Gang Power Investments Limited**³⁰ and **Sian Participation Corp (in liquidation) v Halimeda International Limited**.³¹ It also supports respect for the New York Convention framework as a whole, including the supervisory role of the courts of the seat. However, to enforce an award that has been finally set aside by the apex court of the seat, absent compelling evidence of unfairness or impropriety, would undermine legal certainty and comity. The Court is not satisfied that recognition of the CC's judgment would offend the public policy of this jurisdiction.
- [101] The Court accepts that section 86(2)(f)(ii) confers a discretion rather than a mandatory rule. However, that discretion must be exercised consistently with principle and authority. It is not

²⁴ [2020] UKSC 48, [2020] 3 W.L.R. 1474.

²⁵ [2000] Q.B. 451.

²⁶ [2006] EWCA Civ 1462.

²⁷ [2014] EWCA Civ 1315.

²⁸ [2012] UKSC 60, [2013] 2 A.C. 66.

²⁹ [2002] EWCA Civ 1738.

³⁰ (BVIHCM 2023/006, 1 February 2024).

³¹ [2024] UKPC 14. Cf. **Welltech Group Limited v Techmix Limited** (BVIHCM 2025/0209, 5 December 2025), in which these and other authorities were considered in detail.

enough that the enforcing court might have reached a different conclusion, or that the Claimant can point to an arguable legal error. In other words, while, on the face of the statutory provision, the discretion may be thought to be wide and unfettered, it is subject to the limitation that it should be exercised judicially, taking into account all the circumstances of a particular case and having regard to the purpose for which the discretion exists. As Parker LJ observed in **Ottway v Jones**³², in the context of the exercise of a discretion in another context:

“[A discretion may], on the face of it, [be] completely unfettered. I say ‘on the face of it’ because, of course, the discretion cannot be exercised arbitrarily; it must be exercised judicially and on fixed principles dictated by reason and justice.”

- [102] The key point is this: when a judge exercises a broad discretion from scratch — as I am doing here under s. 86(2) — clear limits apply. The Court must be guided by the specific facts and circumstances of this case alone. Decided cases — whether from England and Wales or this jurisdiction — will seldom offer more than limited help in exercising such a wide discretion. The basic rule for discretionary decisions is to avoid using a mechanical scoring system, such as assigning points to factors and summing them. Instead, the Court must take a rounded view of all the facts and details. In short, it requires an independent judgment tailored to this case.
- [103] The Claimant contends that, even absent exceptional circumstances, this Court should adopt a less restrictive approach, reflecting its pro-arbitration stance and the practice in other jurisdictions, as noted in **Kenworth Industrial Limited v Xin Gang Power Investments Limited** and **Sian Participation Corp. (in liquidation) v Halimeda International Limited**. I cannot accept that submission. The English authorities on recognition of awards set aside at the seat are grounded in both principle and the imperative of finality: it is impermissible for a party to attempt to circumvent the judgment of a domestic or foreign court in the hope of securing a more favourable hearing elsewhere. Allowing such an approach would risk undermining this jurisdiction's international standing and encourage a proliferation of opportunistic legal proceedings.

³² [1955] 1 W.L.R. 706 at 714.

[104] No circumstances of sufficient gravity have been shown to justify the enforcement of the 2022 Award notwithstanding its annulment. Once set aside by the CC, the Award ceased to have legal effect at its seat. In the absence of a valid award, enforcement cannot succeed, and the worldwide freezing order, granted solely to enforce that Award, cannot stand independently.

CONCLUSION

[105] For the reasons set out above, the Court declines to recognise or enforce the arbitral award dated 20 October 2022.

[106] The judgment of the CC dated 8 May 2025 is recognised and shall be given effect in this jurisdiction

[107] It follows that the Claimant's claim must be, and is hereby, dismissed

[108] The interim orders granted on 22 May 2024, including the worldwide freezing injunction, are discharged forthwith.

[109] In these circumstances, it is unnecessary to determine the other issues canvassed by the parties.

[110] It is unnecessary to recite every argument advanced by the parties. I have confined my consideration to matters essential to determining the issues arising in the Claim and the applications made within it. The submissions and accompanying materials were extensive, and it is apparent that each party applied considerable industry and ingenuity to the presentation of its case. For the avoidance of doubt, no party may contend that I have failed to address any point of significance: a judge is not required to determine every contention raised on an application: see, by way of examples, **Weymont v Place** [2015] EWCA Civ 289, at [4]–[6], per **Patten LJ**; and **English v Emery Reimbold & Strick Ltd** [2002] EWCA Civ 605, [2002] 1 W.L.R. 2409. It is sufficient for the Court to determine whether the Claimant's case in the Claim is made out on the material before it. I have concluded that it is not.

[111] I invite counsel to lodge an approved minute of an order to reflect my judgment before the handing-down hearing, including on the issue of costs if agreement on that issue can be reached.

ACKNOWLEDGMENTS

[112] I again express my deep and sincere gratitude to Counsel for the manner in which they presented their clients' cases and for their cooperation throughout the Hearing.

Abbas Mithani KC
High Court Judge

By the Court
Registrar