

REPUBLIC OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO. 17/29804

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES

In the matter between:

VODACOM INTERNATIONAL LIMITED
VODACOM GROUP LIMITED

First Applicant
Second Applicant

and

MOTO MATIKO MABANGA

Respondent

SUMMARY

The applicants applied that an award by the International Court of Arbitration of the International Chamber of Commerce made on 3 November 2015, be made an order of Court.

The respondent opposed the application on the basis that it would be against public policy to grant the order. He averred that the award was made in his absence because he was refused the Schengen visa to go to Paris.

HELD

The issue of making an arbitration award an order of Court is governed by the provisions of the Act. The Act is governed by the provisions of Recognition and Enforcement of Foreign Arbitral Awards Act, 1977 (Act 40 of 1977). This Act was, however, repealed with effect from 20 December 2017 by the International Arbitration Act, Act 15 of 2017. Despite its repeal, the Act is still applicable to applications that were brought before 20 December 2017.

The Act provides that an application to that effect may be refused on the grounds of public policy.

Public policy is not defined in the Act. As a result one has to look at common law to find the meaning thereof.

Public policy is closely associated with and cannot be separated from, the community's perception of justice, equity, good faith and reasonableness.

The refusal of the Schengen visa was not the cause of the respondent's failure to attend the arbitration proceedings. He chose to stay away from the arbitration proceedings.

There was no public policy against making the arbitration award an order of court.

The order sought was granted.