TELEKOM MALAYSIA BERHAD

v.

OBNET SDN BHD

Federal Court, Putrajaya
Abdul Rahman Sebli CJSS, Hasnah Mohammed Hashim, Abdul Karim Abdul Jalil FCJJ
[Civil Appeal No: 02(f)-97-11-2022(W)]
16 October 2024

Arbitration: *Arbitral tribunal — Significance and enforceability of oral pronouncements by an arbitral tribunal in bifurcated arbitration proceedings — Whether oral decision by Arbitral Tribunal on liability, being decision on substance of dispute, a valid decision within meaning of Arbitration Act 2005 — Whether written award on liability must be published — Arbitration Act 2005, ss 2, 33*

This appeal raised questions about the significance and the enforceability of oral pronouncements by an arbitral tribunal in bifurcated arbitration proceedings governed by the Arbitration Act 2005 ("AA 2005") and KLRCA Arbitration Rules, known as the AIAC Arbitration Rules 2021 ("Rules 2021"). In particular, whether an oral decision by an Arbitral Tribunal on liability, being a decision on the substance of a dispute, was a valid decision within the meaning of the AA 2005. The appellant had obtained leave to appeal on the following question of law: where an arbitral tribunal directed proceedings to be bifurcated (with liability to be heard and decided first followed by determination of quantum, if liability was established), whether an oral pronouncement by the arbitral tribunal on liability was sufficient to: (i) amount to a decision on liability; and (ii) entitle the arbitral tribunal and parties to proceed with a determination of quantum, in a case where the arbitration was governed by the AA 2005 and Rules 2021. In this appeal, the Arbitrator had orally decided on liability and found that the respondent had proven its case and the appellant had proven its counterclaim. However, having decided on liability, the Arbitrator intended to publish one final award after the conclusion of the hearing on damages following the practice of the civil courts. Thus, the central issue for determination was whether the oral decision given by the Arbitrator was an award as envisaged under the AA 2005.

Held (allowing the appeal with costs):

(1) In the instant appeal, having found, on the facts, that the Arbitrator's decision on liability amounted to a decision on the "substance of the dispute", the High Court and Court of Appeal ought to have held that the decision must be published in the form of an award as mandatorily required by ss 2 and 33 of the AA 2005 for it to be valid and have any legal effect. The High Court and Court of Appeal erred in holding that the AA 2005 did not prescribe a timeline

for an award to be published and that the Arbitrator could publish an award on liability at the end of arbitral proceedings. (para 44)

(2) A decision on liability was a decision on the substance of the dispute and thus, an award under the AA 2005. The AA 2005 excluded the possibility of the Arbitrator delivering an oral award. Undeniably, the Arbitrator was the master of the arbitration proceedings and could decide to bifurcate the proceedings, or otherwise. However, the provisions of the AA 2005 must be strictly complied with and the Arbitrator must carry out his functions and duties as expressly required under the AA 2005. The Arbitrator was required to give a sufficiently reasoned award to demonstrate the reasons for the decision and, more importantly, as a prerequisite for any appeal against the arbitral tribunal's decision. Further, with a written award, there would be certainty for the parties to proceed with the next stage of the arbitration. Thus, any failure to comply was a violation of the Act and would taint any decision made by an Arbitrator. Without a valid decision on liability, the parties to the dispute and the Arbitral Tribunal could not proceed with the assessment of damages. The AA 2005 did not give the discretion to defer or delay publication of an award. Furthermore, the publication of an award on liability was necessary to ensure the Arbitral Tribunal was *functus officio* on the issue of liability. (paras 45-46)

(3) The moment the Arbitrator delivered his decision as what had transpired in this appeal, the Arbitrator was *functus officio* on the issue of liability. Had the High Court Judge carefully examined the provisions of the AA 2005, she could not have concluded that an Arbitrator could deliver an oral decision. Therefore, the oral pronouncement made by the Arbitrator on liability was the final determination on liability. Henceforth, the Arbitrator must comply with the requirements of the AA 2005 and must publish a written award. (paras 47-48)

(4) The question posed was answered in the following manner: where an Arbitral Tribunal, in this case, the Arbitrator, directed proceedings to be bifurcated, an oral pronouncement on liability by the Arbitrator was a decision on the substance of dispute between the parties. However, it did not entitle the Arbitrator to proceed with the determination of quantum until a written award on liability was given as mandatorily required under the AA 2005. (para 54)

Case(s) referred to:

Far East Holdings Bhd & Anor v. Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Other Appeals [2018] 1 MLRA 89 (refd)

Haris Fatillah Mohd Ibrahim v. Suruhanjaya Pilihan Raya Malaysia [2017] 6 MLRA 233 (refd)

IMPSA (Malaysia) Sdn Bhd v. Bank Muamalat Malaysia Berhad & Ors [2011] 7 MLRH 508 (refd)

Lee Eng Eow v. Mary Lee & Anor [1999] 1 MLRA 302 (refd)

MCIS Insurance Bhd v. Associated Cover Sdn Bhd [2001] 7 MLRH 12 (refd)

PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA [2006] SGCA 41 (refd)

Legislation referred to:

Arbitration Act 2005, ss 2, 8, 21, 31(1), 32, 33(1), (3), 37, 38

Rules of Court 2012, O 7 r 3

UNCITRAL Arbitration Rules, art 34

Other(s) referred to:

Halsbury's Laws of Singapore, Vol 2, p 83, para [20.095]

Sundra Rajoo, *Law, Practice and Procedure of Arbitration,* LexisNexis, 2nd edn, 2016, p 580

Sundra Rajoo, *UNCITRAL Model Law & Arbitration Rules, The Arbitration Act 2005 (Amended 2011 & 2018) and The AIAC Arbitration Rules 2018*, Sweet & Maxwell, 2018, pp 57 & 58

Counsel:

For the appellant: Lambert Rasa-Ratnam (Chan Mun Yew, Nicole Shieh E-Lyn & James Lau Jian Hui); M/s Lee Hishammuddin Allen & Gledhill

For the respondent: S Murthi (Vivekhapriya Regunathan with him); M/s S Murthi & Associates

JUDGMENT

Hasnah Mohammed Hashim FCJ:

[1] The appeal raised questions about the significance and the enforceability of oral pronouncements by an arbitral tribunal in bifurcated arbitration proceedings governed by the Arbitration Act 2005 (AA 2005) and KLRCA Arbitration Rules, now known as the AIAC Arbitration Rules 2021 (Rules 2021). In particular, whether an oral decision by an Arbitral Tribunal on liability being a decision on the substance of a dispute, is a valid decision within the meaning of the AA 2005. We heard oral submissions by all learned counsel representing the respective parties and at the end of those submissions we indicated that we needed time to consider the respective submissions. We have now reached our decision and what follows below are our deliberations on the issues raised and our reasons as to why we have so decided.

[2] On 3 November 2022, Telekom Malaysia Berhad (Telekom) obtained leave to appeal on the following question of law:

> Where an arbitral tribunal directs proceedings be bifurcated (with liability to be heard and decided first followed by determination of quantum, if liability is established), whether an oral pronouncement by the arbitral tribunal on liability is sufficient to (i) amount to a decision on liability and (ii) entitle the arbitral tribunal and parties to proceed with a determination of quantum, in a case where the arbitration is governed by:

(a) the Arbitration Act 2005 (AA 2005); and

(b) the KLRCA Arbitration Rules (AIAC Arbitration Rules 2021).

Factual Background

[3] In 2003, the Selangor State Government (the State Government) awarded a project to the Respondent, Obnet Sdn Bhd (Obnet), to connect all State Government departments, statutory bodies, municipals/local authorities, Government-linked companies and Government agencies via a high-speed broadband network (SELNET Project). Two agreements were executed between Obnet and the State Government, that is, the Selangor Broadband Internet Access Agreement dated 10 October 2003 and the Subscription Agreement dated 23 September 2005 (SELNET Agreements).

[4] Obnet appointed Telekom, the Appellant in this appeal, as an independent contractor to design and build a network infrastructure for the SELNET Project in 2007. This resulted in a Metro Ethernet Services Agreement (Metro-E Agreement) executed between Obnet and Telekom on 19 April 2007. The Metro-E Agreement contains an arbitration agreement clause stipulating that any disputes arising out of or in connection with the Metro-E Agreement shall be referred to arbitration under the KLRCA Rules.

[5] Unfortunately, a dispute arose between Obnet and the State Government in 2008 regarding the provision of sites under the SELNET Project which resulted in the termination of the SELNET Agreements on 10 September 2009. The Metro-E Agreement with Telekom was also terminated on 30 September 2009.

[6] Unhappy with the termination, Obnet commenced arbitration proceedings against Telekom alleging, *inter alia*, that Telekom had unlawfully interfered with and used confidential information obtained from the SELNET Project to provide its own network services to the State Government. This ultimately resulted in the State Government terminating the SELNET Agreements. Telekom counterclaimed and claimed for the sums due and owing by Obnet under the Metro-E Agreement.

[7] Parties referred the disputes to arbitration and Dato Hj Azmel bin Haji Maamor, a retired Judge, was appointed as the arbitrator (the Arbitrator) to resolve the dispute between the parties. The Arbitrator decided to bifurcate the arbitration proceedings, that is, firstly, the determination on the issue of liability, and thereafter once liability has been established, he will hear and determine the issue of damages in respect of the claim and/or the counterclaim. The mode of the hearing was reiterated by the Arbitrator during the hearing on 25 October 2016 when evidence in respect of liability was heard.

[8] Almost four years after the arbitration commenced, on 26 June 2020, the Arbitrator orally informed the parties that he allowed Obnet's claim and Telekom's counterclaim. The Arbitrator notified the parties that he would not publish a written award at this stage. Via letters dated 6 July 2020 and 13 July

2020, Telekom's solicitors wrote to the Arbitrator requesting for an award to be published in accordance with ss 2 and 33 of the Arbitration Act, and art 34 of the UNCITRAL Arbitration Rules (adopted by the KLRCA Rules).

[9] Obnet, however, objected to Telekom's request and took the position that:

a) the Oral Decision was not meant to be an award. It is merely an interlocutory order/ruling made in the course of the Arbitration Proceedings; and

b) that the Arbitrator, being the master of its procedure, has discretion on whether to issue an interim award with respect to liability or otherwise.

[10] Vide letter dated 16 July 2020, the Arbitrator notified the parties that there is no requirement for an award to be published at that juncture. On the last day of oral submissions on 4 February 2020, the Arbitrator informed the parties that he would deliver its decision on liability on 16 April 2020. This was subsequently adjourned to 26 June 2020 due to the Movement Control Order. On 26 June 2020, the Arbitrator informed the parties orally that Obnet's Claim and Telekom Malaysia's Counterclaim were allowed. The Arbitrator gave brief reasons for its decision and that an award on liability would not be published at this stage. Telekom's solicitors subsequently wrote to the Arbitral Tribunal on 6 July 2020 and 13 July 2020 requesting that an award on liability be published in accordance with ss 2 and 33 AA 2005 and art 34 of the UNCITRAL Arbitration Rules. Obnet, however, objected to Telekom's request. In their letter dated 9 July 2020, they took the position that the oral decision was not meant to be an award and was merely an interlocutory order/ruling made in the course of the Arbitral Proceedings.

[11] On 16 July 2020, the Arbitrator informed the parties that there is no requirement for an Award to be published and that the practice in the High Court should be followed, where a written judgment is only published at the conclusion of the hearing on quantum. Obnet's solicitors subsequently wrote to the Arbitral Tribunal to request for directions in respect of the hearing on the assessment of damages and for hearing dates to be fixed.

Decision Of The High Court And The Court of Appeal

[12] Dissatisfied with the approach taken by the Arbitrator, Telekom filed an Originating Summons No WA-24NCC(ARB)-22-07-2020 (OS) at the Kuala Lumpur High Court seeking, amongst others, for:

(a) a declaration that the Oral Decision in respect of Telekom's and Obnet's liability is invalid;

(b) an order to restrain Obnet from taking any further steps to proceed with the arbitration proceedings between the parties until the Arbitral Tribunal duly publishes an award on its determination

on the issue of liability of the parties in respect of the claim and counterclaim;

(c) an interim injunction to restrain Obnet from taking any further steps to proceed with the Arbitration Proceedings pending the disposal of the OS; and

(d) alternatively, an order that the Arbitration Proceedings be stayed pending the issuance of a written award in respect of liability by the Arbitral Tribunal.

[13] After hearing arguments, the Learned High Court Judge dismissed the OS. On the failure by Telekom to state the relevant provisions in the intitulement of the OS, Her Ladyship was of the view that the failure to state ss 2 and 3 of the Arbitration Act in the intitulement was a mere irregularity and not a nullity. Obnet was not at all taken by surprise as the said sections were stated and referred to in the body of the OS, namely, in prayers (2) and (4) of the OS. Further, Obnet failed to demonstrate that they were prejudiced or that failure to state the relevant provisions in the intitulement caused any miscarriage of justice. She explained in her grounds of judgment:

> [28] In this instant case although ss 2 and 3 of the Arbitration Act were not stated in the intitulement, this court is of the view the Defendant is not at all taken by surprise because the said sections are stated and referred to in the body of the OS, namely, in prayers (2) and (4) of the OS. Importantly, the Defendant did not demonstrate that they are being prejudiced by the Plaintiffs' failure to state both the said sections in the intitulement or that it has caused a miscarriage of justice.

[14] In respect of Telekom's complaint that the Arbitrator failed to publish a written award in respect of the Oral Decision, the High Court Judge opined that the OS as it is worded had not pleaded any cause of action against Obnet as required by O 7 r 3 of the Rules of Court 2012 (ROC). Furthermore, Telekom had sought injunctive relief against Obnet. Her Ladyship observed that it is trite law that injunction is not a cause of action (Re: *Lee Eng Eow v. Mary Lee & Anor* [1999] 1 MLRA 302; *IMPSA (Malaysia) Sdn Bhd v. Bank Muamalat Malaysia Berhad & Ors* [2011] 7 MLRH 508). The OS failed to state a reasonable cause of action against Obnet and, therefore, must be dismissed.

[15] For completeness, the learned High Court Judge discussed the merits of the OS. Prayer 1 of the OS sought a declaration that the decision given by the Arbitrator orally was invalid. Her Ladyship cited the case of *Haris Fatillah Mohd Ibrahim v. Suruhanjaya Pilihan Raya Malaysia* [2017] 6 MLRA 233, where the Court of Appeal held that the most important feature of a declaratory judgment is that it is a discretionary remedy and the court must therefore carefully consider the circumstances and terms upon which the relief is sought.

[16] The learned High Court Judge further articulated in her grounds of judgment that by virtue of s 21 of the AA 2005, the Arbitrator is vested with the discretion to determine the manner the arbitration proceedings is to be conducted. There was no evidence before the court to indicate that when the Arbitrator decided to bifurcate the arbitration proceedings, the Arbitrator must deliver a written award after the hearing on liability was completed.

[17] Telekom requested for the award on liability to be made on the day the Arbitrator delivered his oral decision on liability on 26 June 2020 followed by a subsequent request in writing sometime in July 2020. The ruling to bifurcate the arbitration proceedings was made in September 2016 when the proceedings commenced. The High Court Judge accepted and agreed with the arguments advanced by Obnet that Telekom could not insist on a written award to be delivered on the issue of liability as there was no complaint that the decision of the Arbitrator to decide on the issue of liability first and published one final award after completion of the assessment of damages has breached the rule of natural justice.

[18] Her Ladyship further explained that the Act does not require the Arbitrator to immediately publish his award after determining the issue of liability. Therefore, she concluded that Telekom is estopped from insisting for the written award of the oral decision. The issue of estoppel cannot be raised to negate the operation of a statutory provision as the Act does not prohibit the issuance of one final award at the end of the arbitration proceedings.

[19] The Court of Appeal agreed with the High Court Judge and affirmed the High Court Judge's decision. Unfortunately, there are no written grounds of judgment of the Court of Appeal. On the application of Telekom Malaysia, the Court of Appeal on 15 June 2022 granted an Erinford Injunction to restrain Obnet from taking any steps in the Arbitral Proceeding pending the disposal of Telekom's application for leave to appeal and the appeal, if leave is granted.

Our Analysis And Determination

Whether An Oral Decision Given By The Arbitrator Is An Award

[20] In this appeal, the central issue for our determination is whether the oral decision given by the Arbitrator is an Award as envisaged under AA 2005. On the facts, the Arbitrator had decided on liability and found that Obnet had proven its case and Telekom had proven its counterclaim. However, having decided on liability, the Arbitrator intends to publish one final award after the conclusion of the hearing on damages following the practice of the civil courts.

[21] The AA 2005 is based on the Model Law on International Commercial Arbitration described as the Model Law reforming the law relating to domestic arbitration as well as international arbitration extending to the recognition and enforcement of awards and related matters.

[22] Section 2 of the AA 2005 defined "Award" as being:

> ..... a decision of the arbitral tribunal on the substance of the dispute and includes any final, interim or partial award and any award on costs or interest but does not include interlocutory orders...

[23] Under s 2 of AA 2005 there can only be two types of decisions that can be delivered by an arbitral tribunal, that is

(i) a decision on the substance of dispute – which constitutes an award and must be delivered in the form prescribed for an award; or

(ii) a decision on procedural or interlocutory matters.

[24] The definition of an Award under s 2 AA 2005 extends to a decision on the substance of the dispute, whether it is made as a final, interim or partial decision. The definition of an Award under s 2 AA 2005 must be read with s 33 of the same Act mandating the form and content of an Award:

(1) An award shall be made in writing and subject to subsection (2) shall be signed by the arbitrator.

(2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient provided that the reason for any omitted signature is stated.

(3) An award shall state the reasons upon which it is based, unless:

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an award on agreed terms under s 32.

(4) An award shall state its date and the seat of arbitration as determined in accordance with s 22 and shall be deemed to have been made at that seat.

(5) After an award is made, a copy of the award signed by the arbitrator in accordance with subsections (1) and (2) shall be delivered to each party.

(6) Subject to subsection (8), unless otherwise agreed by the parties, the arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment of the whole or any part of:

(a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;

(b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or

(c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

(7) Nothing in subsection (6) shall affect any other power of an arbitral tribunal to award interest.

(8) Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

[25] Section 31(1) AA 2005 expressly stipulates that an Award must be made in writing and further provides as stated under s 33(3) of the same Act that an Award shall state the reasons upon which it is based. The only exceptions are if the parties agree that no reasons ought or need to be given or the award is an award on agreed terms under s 32 AA 2005.

[26] The learned High Court Judge however, opined that since there is no express provision in the Act as to when a written award is to be delivered, in particular where bifurcation of proceedings is adopted, the Arbitrator cannot be compelled to deliver his decision prior to the completion of the arbitration proceeding which in this case would be until the completion of the assessment of damages. Therefore, in the absence of any provision in the Act, the failure of an Arbitrator to deliver one final award after the completion of the arbitration proceedings is not a violation of the Act. The Act does not have any restriction if the Arbitrator decides to deliver an oral decision. Furthermore, the subject matter of the oral decision does not fulfil the criteria of an award in so far as the form and content as stipulated in s 33 of the Act.

[27] The learned Judge further reasoned that it was premature for Telekom even to speculate that its rights would be infringed. Furthermore, Telekom did not raise any complaint before the Arbitrator that they could not proceed with the hearing on quantum because there was no written award published by the Arbitrator.

[28] Her Ladyship was of the considered view that the continuation of the arbitration proceeding in relation to the quantum of damages would not be oppressive, vexatious and unconscionable. Restraining the arbitration proceeding would delay the hearing of the assessment of damages and the arbitration proceedings which commenced in 2016. Furthermore, there must be minimal intervention by the Court as stipulated in the AA 2005. Premised on the reasons stated above, the equitable relief sought for injunction was refused. The burden is on Telekom to show special circumstances which warrant this court to exercise its discretion to grant a stay. Telekom failed to do so, and thus the application was dismissed.

[29] The pertinent question for determination before this Court deals with a fundamental point of importance in an arbitration commenced under AA 2005 and the Rules 2021. In essence, whether an oral decision by an Arbitral Tribunal on liability is a decision on the substance of a dispute is a valid decision within the meaning of the Act and the Rules.

[30] On 16 July 2020, the Arbitrator informed the parties there was no requirement for an award to be published after he had delivered his oral decision on liability. The Arbitrator opined that the practice in the High Courts should be followed, where a written judgment is only published at the conclusion of the hearing on quantum. The issue is whether to constitute a valid decision on the substance of a dispute, in this case, on liability, must the decision of the Arbitral Tribunal / Arbitrator be delivered in the form of an 'Award', within the meaning of s 33 of the AA 2005.

[31] The provision of s 2 of AA 2005 is plain and unambiguous that is, the decision of an Arbitrator on the "substance of the dispute" constitutes an Award whether it is a final, interim or partial award and any award on costs or interest. However, as the law expressly provides it does not include interlocutory orders. Interlocutory orders by the Arbitrator deal with procedural issues such as scheduling of hearings, security for costs, and discovery etc. In his book *UNCITRAL Model Law & Arbitration Rules, The Arbitration Act 2005* (Amended 2011 & 2018) *and The AIAC Arbitration Rules 2018* (Sweet & Maxwell 2018) pp 57 and 58, Datuk Professor Sundra Rajoo explained that the definition of 'award' in s 2 lays down the test to be employed by courts in ascertaining whether an arbitral tribunal's decision is an award, interlocutory order or otherwise. The important test is that the decision must relate to the substance of the dispute. The main purpose of the test is to distinguish awards from procedural orders. An Award as defined under the Act must relate to the substantive legal rights and duties of the parties.

[32] Therefore, an order of a procedural nature is not an Award as envisaged under the Act. An Award can either be final, interim or partial, and, irrespective of the type of Award, the Award must necessarily have the effect of finality on the issue it disposes. In the appeal before us the determinative issue decided by the Arbitrator is that of the liability of the parties to the dispute.

[33] His Lordship KC Vohrah J (as he then was) in *MCIS Insurance Bhd v. Associated Cover Sdn Bhd* [2001] 7 MLRH 12 referred to Halsbury's Laws of Singapore, Vol 2 at 83, para [20.095] that an award is final in its

> [20.095] 'Interim', 'partial' and 'interlocutory'
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> The terms 'interim', 'partial' and 'interlocutory' have no statutory definition. All awards are final in their terms in that in so far as relating to the issues decided therein, they are final. On practice, the term 'interim award' is generally used to describe any award that is not final (last) award in the arbitration. Decisions on issues of the applicable proper law, time-bar defences, joinder of parties and arbitral jurisdiction have been described as interim awards, as

> have awards made on part of the claims only, either on the basis of admission or following a decision of a part only of the issues in dispute. The terms 'partial award' is sometimes used to describe awards on part of the claims only. An interlocutory award would normally be an award that deals with certain issues such as liability (being final on the issue) leaving quantum to be further assessed. Partial awards and interlocutory awards could also be termed 'interim awards'. An award dealing with all the issues in the claim and the counterclaim but leaving the issue of costs to be argued is nevertheless often termed an interim award.

[34] Section 33(1) AA 2005 mandates that the Award must be made in writing. If the Award is not in writing, it cannot be enforced, set aside or even form the basis for reference of law. In this case, on the facts the Arbitrator has decided on liability which means that he has decided issues relating to a substantive dispute on liability. As far as liability is concerned, it is final and binding.

[35] The Singapore Court of Appeal in *PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA* [2006] SGCA 41 held that the nomenclature or label used by the Arbitral Tribunal to describe its decision is irrelevant. What is important is whether the decision delivered by the Arbitrator is a decision on the substance of the dispute. The words 'substance of the dispute' distinguish procedural and practical matters on one hand, and substantive matters affecting the rights of the parties on the other. It must be contrasted with orders and directions that address the procedural aspects of arbitration.

[36] Under the Model Law, there is no concept of an arbitral tribunal delivering a decision on the substance of dispute, in any form other than an award. It is unarguable that an arbitral tribunal's decision on liability is a decision on the substance of the dispute as it determines a substantive issue between parties to the arbitration, and the parties' legal rights and obligations. Any other interpretation would be absurd. The Arbitrator's decision to bifurcate the proceedings does not in any manner absolve him from the provisions of the Act. Thus, he must comply with the provisions of the Act mandating him as an Arbitrator that when he delivers his decision on liability that decision is an Award under which can be enforced under s 38 of the Act. The argument that it was not an Award as the issue of quantum had yet to be determined is untenable. Article 34 UNCITRAL Arbitration Rules provides that the arbitral tribunal may make separate awards on different issues at different times. However, Awards must be made in writing and shall be final and binding on the parties. The arbitral tribunal shall state the reasons upon which the award is based unless the parties have agreed that no reasons are to be given. Therefore, any decision of an arbitral tribunal, in this case, the Arbitrator on the substance of a dispute which does not comply with the mandatory requirements of s 33 of the Act must be regarded as being invalid.

[37] Section 33(1) of the AA 2005 excludes the possibility of the Arbitrator making an oral award. An Award other than in the form prescribed in the section will necessarily be invalid. Once again, we have to examine the provisions of AA 2005. The AA 2005 does not recognise an oral award as being an Award as there is no express provision enabling an Arbitrator to give an oral decision on matters which are the substance of the dispute. Thus, a decision on matters which are the substance of the dispute must be an Award and that Award must be in writing and duly signed. The form and contents of the Award must satisfy the requirements as provided under s 33 of the AA 2005 notwithstanding the decision by the Arbitrator to bifurcate the proceedings.

[38] Datuk Professor Sundra Rajoo in his book *Law, Practice and Procedure of Arbitration* (2nd edn, LexisNexis 2016) p 580 said:

> Most arbitral institution rules do require the award to be in writing. The writing requirement has not given rise to any dispute in Malaysia and Singapore... Conversely, no arbitral tribunal will attempt to render an oral award in the style of the court rendering its decision orally or reading out its judgment. The old common law rule which permitted oral awards is no longer applicable. The Arbitration Act 2005 does not apply to oral awards.

[39] He further explains in his book that the classification of an arbitral tribunal's decision as an award or otherwise is important as it will determine whether such a decision is enforceable or susceptible to intervention by the Courts or whether it is binding on parties and the arbitral tribunal; and finally, the extent of which an arbitral tribunal can validly recall or vary such decision.

[40] Section 2 of AA 2005 expressly excludes 'interlocutory orders' from the definition of Awards. 'Interlocutory orders' by the Arbitral Tribunal deal with procedural issues such as scheduling hearings, security for costs, and discovery etc. An Award must be interpreted to mean a "final determination of a particular issue or claim in the arbitration and must be contrasted with orders and directions which address the procedural aspects in an arbitration proceeding. The oral decision by the Arbitrator in the appeal before us is clearly not an interlocutory order but a final determination on liability in the dispute between Telekom and Obnet.

[41] Section 8 AA 2005 reads:

> No court shall intervene in matters governed by this Act, except where so provided in this Act.

[42] The statutory regime of AA 2005 intends minimal intervention by the Courts. Jeffery Tan FCJ delivering the majority judgment of the Federal Court in *Far East Holdings Bhd & Anor v. Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Other Appeals* [2018] 1 MLRA 89 observed:

> The principle of minimal interference by the court, which is an ingrained aspect of the UNCITRAL Model Law on International Commercial Arbitration, is reflected in s 8. That principle was accepted in *Perwira Bintang*, *Government Of The Lao Peoples Democratic Republic v. Thai-Lao Lignite Co Ltd ("TLL"), A Thai Company & Anor* [2013] 3 MLRH 9, *Ajwa For Food Industries*, *Taman Bandar Baru Masai Sdn Bhd v. Dindings Corporations Sdn Bhd* [2009] 4 MLRH 171, *Rmarine Engineering (M) Sdn Bhd.v. Bank Islam Malaysia Berhad (Encl 1)* [2012] MLRHU 1279, and *Chain Cycle*. The model law requires recognition of the principles of party autonomy, minimal court intervention and international harmonisation of laws.

[43] To ensure minimal intervention or ideally no intervention at all by the courts, the AA 2005 sets out the procedures which must be followed and complied with not only by the Arbitrator but also by the parties involved in the arbitration. Under the AA 2005, an Award by an Arbitrator whether interim or final must be in writing giving reasons for its decision. Generally, the Courts will not intervene in arbitral proceedings which is the domain of the arbitrator. There is also no requirement under the AA 2005 and the Rules 2021 that empowers an Arbitral Tribunal to mimic or adopt Court procedures as what happened in this appeal before us. The Arbitrator must, therefore, at all times comply strictly with the provisions of the AA 2005.

[44] We, therefore, agree with the arguments advanced by learned counsel for Telekom that having found that the Arbitrator's decision on liability amounts to a decision on the "substance of the dispute", the High Court and Court of Appeal ought to have held that the decision must be published in the form of an award as mandatorily required by ss 2 and 33 AA 2005 for it to be valid and have any legal effect. The High Court and Court of Appeal erred in holding that the Act does not prescribe a timeline for an award to be published and that the Arbitrator can publish an award on liability at the end of arbitral proceedings.

[45] After giving much consideration to this issue, we are satisfied that there is a good deal of substance in the argument put forward by learned counsel for Telekom that a decision on liability is a decision on the substance of the dispute and thus an Award under the Act. We reiterate that the AA 2005 excludes the possibility of the Arbitrator delivering an oral Award. Undeniably, the Arbitrator is the master of the arbitration proceedings and can decide to bifurcate the proceedings or otherwise. However, the provisions of the AA 2005 must be strictly complied and the Arbitrator must carry out his functions and duties as expressly required under the Act. The Arbitrator is required to give a sufficiently reasoned Award to demonstrate the reasons for the decision and more importantly, as a prerequisite for any appeal against the arbitral tribunal's decision. Further, with a written Award, there will be certainty for the parties to proceed with the next stage of the arbitration. Thus, any failure to comply is a violation of the Act and will taint any decision made by an Arbitrator.

[46] Without a valid decision on liability, the parties to the dispute and the Arbitral Tribunal cannot proceed with the assessment of damages. The AA 2005 does not give the discretion to defer or delay publication of an award. Furthermore, the publication of an award on liability is necessary to ensure the Arbitral Tribunal is *functus officio* on the issue of liability.

[47] As alluded to earlier, the decision on the substance of the dispute must be published in the form of an Award, as mandatorily required by ss 2 and 33 AA 2005, for it to be valid and have any legal effect. The moment the Arbitrator delivers his decision as what had transpired in this appeal before us, the Arbitrator is *functus officio* on the issue of liability. Had the High Court Judge carefully examined the provisions of the AA 2005, she could not have concluded that an Arbitrator can deliver an oral decision.

[48] In conclusion, and based on the reasons we have articulated, the oral pronouncement made by the Arbitrator on liability is the final determination on liability. Henceforth, the Arbitrator must comply with the requirements of the AA 2005 and must publish a written Award.

Injunction

[49] Injunctions can be granted to restrain arbitration in situations where:

> It does not cause any injustice to the parties in an arbitration and where if an injunction is not granted the continuance of the arbitration would be oppressive, vexatious, unconscionable or an abuse of process. The Federal Court in *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLRA 378 approved the higher threshold test as stated in *J Jarvis and Sons Ltd v. Blue Circle Dartford Estates Ltd* to injunct an arbitration as follows:
>
> > The *J Jarvis* line of cases, parties seeking an injunction to restrain arbitration proceedings are the contracting parties to the arbitration agreement. This feature and distinction are crucial. In such cases, where a party to arbitral proceedings seeks to restrain the continuance of the arbitration proceedings a higher or different test or threshold imposed would be a logical and sensible requirement given the contractual obligations entered into by the party seeking to restrain the arbitral proceedings.

[50] Learned counsel for Telekom argued that Telekom has a statutory right to immediately apply to set aside an award on liability under s 37 AA 2005 without waiting for the assessment of damages to be heard. Obnet's insistence on assessing damages without an award of liability is, therefore, a plain denial of Telekom's rights under the Act.

[51] We have given our utmost consideration to the submissions of learned counsel as well as the authorities cited and, we have carefully perused the grounds of judgment of the learned judge, we are satisfied that the balance of convenience lies in favour of Telekom to safeguard their rights under the Act.

[52] The Arbitrator had delivered his decision on liability and must provide as mandated by the Act a written Award before commencing the assessment of damages. We agree with the submissions of learned counsel for Telekom that without an award on liability, it would be a plain denial of Telekom's rights under the AA 2005. An interim injunction is, therefore, necessary to restrain Obnet from taking any further steps to proceed with the arbitration proceedings and that the arbitration proceedings be stayed pending the issuance of a written Award.

Conclusion

[53] Having carefully considered the submissions and authorities of all parties and based on the aforementioned reasons and in the light of the above-settled principles, we found merits in the issues raised by the Appellant. We, therefore, allow the appeal with costs to Telekom as the Appellant. We set aside the decisions of the Court of Appeal and the High Court.

[54] We answer the question posed before us in the following manner. Where an Arbitral Tribunal, in this case, the Arbitrator, directs proceedings to be bifurcated, an oral pronouncement on liability by the Arbitrator is a decision on the substance of dispute between the parties. However, it does not entitle the Arbitrator to proceed with the determination of quantum until a written Award on liability is given as mandatorily required under the AA 2005. We hereby make the following orders as prayed by the Appellant in the OS (Encl 34 in the Common Core Bundle Vol 1):

(i) The oral decision delivered by the Arbitral Tribunal on 26 June 2020 in respect of Telekom's and Obnet's liability is invalid; and

(ii) Obnet (whether by themselves, their officers, directors, employees, servants, principals or agents, nominees or otherwise) be forthwith restrained from taking any further steps, either directly or indirectly, to proceed with the arbitration proceedings between Telekom and Obnet, until the Arbitrator duly publishes an award on its determination on the issue of liability of the parties in respect of the claim and counterclaim, in compliance with ss 2 and 33 of AA 2005 and art 34 of UNCITRAL Arbitration Rules, adopted by the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

[55] Given that the arbitration in this appeal commenced in 2016 and the decision on liability was pronounced orally in 2020, it is necessary and appropriate that the Arbitrator publishes the Award on liability in writing as required under the AA 2005 as soon as reasonably possible. The proceedings on the assessment of damages are, therefore, stayed until the Arbitrator publishes the written Award on liability.

[56] After hearing the parties on the issue of costs, we ordered costs of RM150,000.00 to be paid to Telekom by Obnet subject to allocatur. The sum of RM80,000.00 paid by Telekom as costs in the Courts below to be refunded by Obnet to Telekom within 14 days from the date of this Order.

[57] My learned brothers, Abdul Rahman Sebli CJSS and Abdul Karim Abdul Jalil FCJ have sight of the judgment in draft, concur with the reasons given and the conclusions reached.