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THE AFTERMATH OF SETTING ASIDE AN ARBITRAL AWARD IN RWANDA: THE CROSSROADS OF DOCTRINES

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ABSTRACT

In recent decades, commercial arbitration has undergone substantial evolution at both international and domestic levels. The growth is primarily driven by the increasing preference of multinational corporations for arbitration, governed by trusted international rules, over domestic litigation, which may be fraught with political and legal instability risks. The practice of arbitration is anchored in fundamental principles, notably the finality and non-appealability of arbitral awards. Nonetheless, the recognized possibility to set aside defective awards enhances trust and confidence in arbitration as a reliable dispute resolution mechanism. Jurisdictions tend to follow one of three prevailing doctrines when setting aside arbitral awards: the avoidance of a denial of justice, the prioritization of party autonomy, and the "silence" doctrine. Rwanda aligns with the latter. Over a decade, arbitration has grown rapidly in Rwanda, and courts have generally been supportive of arbitration, with only a few arbitral awards being set aside. A review of these cases reveals that Rwandan courts have yet to provide clear direction on the resolution of the principal dispute after an award is set aside, leaving the substantive conflict unresolved. The absence of legal provisions on this matter contributes to uncertainty for arbitration practitioners regarding post-annulment procedures. This paper examines the current situation with a look at other jurisdictions' practices. It ultimately recommends Rwanda to adopt an approach that emphasizes party autonomy, with courts refraining from interfering in the original arbitration agreement, except in cases where the agreement is null, void, or incapable of performance.

INTRODUCTION

In recent years, disputing business parties have increasingly turned to commercial arbitration as a preferred method of dispute resolution. International arbitration, in particular, is an ever-expanding field and a significant feature of modern commercial life.[1] Commercial entities often favor arbitration, governed by trusted international rules, over domestic litigation, which may be fraught with political and legal instability risks.[2] A survey reveals that 73% of multinational enterprises (MNEs) prefer arbitration over litigation, 95% include arbitration clauses in contracts, while 76% opt for institutional arbitration rather than ad hoc arbitration.[3]

The proliferation of arbitration centers, especially in developing countries, reflects the growing prominence of this form of dispute resolution. Unlike arbitration centers in developed countries, which have long-standing histories, many arbitration centers in developing nations are relatively new. For instance, the Kigali International Arbitration Centre (KIAC) was established in 2010 to become operational in 2012. Nevertheless, it has so far played a crucial role in advancing arbitration in Rwanda. To date, KIAC has administered hundreds of domestic and international cases alongside ad hoc arbitrations seated in Rwanda.

Arbitral awards are, in principle, final and not subject to appeal, consistent with the finality principle. According to this principle, courts are not permitted to substitute their judgment for that of the arbitrator or act as appellate bodies, except where the parties have expressly provided for that.[4] However, there are recognized exceptions under which an award may be set aside. This exceptionality is accepted across jurisdictions, with courts empowered to set aside awards that fall short of the minimum standards of fairness and due process.[5]

Rwanda adopted its first arbitration law in 2008,[6] and Article 47 of that law outlines the grounds for setting aside an award: invalidity of the arbitration agreement, improper notice of arbitrator appointment or defects in the tribunal's formation, violations of the right to defense, ultra vires awards, non-arbitrability of the dispute's subject matter, and awards contrary to public policy. Notably, this provision mirrors Article 34(2) of the UNCITRAL Model Law on International Commercial Arbitration.[7]

While Rwandan law provides specific grounds for setting aside arbitral awards, it remains silent on the procedures following the annulment of an award. This issue is critical because annulling an arbitral award nullifies the award but does not resolve the underlying dispute. An analysis of other jurisdictions' practices reveals that approaches to this issue vary across jurisdictions, as scholars also remain divided on the topic.[8] Some jurisdictions base on the "will of the parties" doctrine to refer the dispute back to arbitration following the setting aside of an award, reflecting the parties' intention to have the matter resolved by arbitration rather than ordinary courts. Conversely, in other jurisdictions, courts that set aside an award proceed to decide the case on its merits. Each approach has advantages and disadvantages, but these are beyond the scope of this paper, which seeks to address the gap in the Rwandan legal system.

The question of what happens after an arbitral award is set aside has nowadays gained particular relevance in Rwanda than ever. Over the past decade, arbitration in Rwanda has grown substantially, both institutionally and through ad hoc arbitrations. Of the cases seated in Rwanda and arbitrated either through KIAC or ad hoc proceedings, a significant number have been challenged in court, seeking to set aside the awards. Despite this, Rwandan courts have generally demonstrated a pro-arbitration stance, with only a few arbitral awards successfully annulled to date, and these are of recent. Examples include RCOMAA 00043/2019/CA (Court of Appeal, 06/12/2019), RCOM 00026/2021/

1 Wade, G. (2013). Courts and Arbitration: An Irish Perspective. *Arbitration*, 79(1), p. 41.

2 Ibid., pp. 49-50.

3 Lagerberg, G., Kus, R. (2007). Global Survey Sheds Light on Perceptions of International Arbitration, cited in Namachanja, C. (2016). The Challenges Facing Arbitral Institutions in Africa. *Arbitration*, 82(1), p. 44.

4 Nyanja, M. A. Critique of the Principle of Finality in Arbitral Proceedings under Section 39(3)(B) of the Arbitration Act, No. 4 of the Laws of Kenya, *LLM Thesis*, University of Nairobi, School of Law, p. 26.

5 Moses, L. M. (2008). The Principles and Practice of International Commercial Arbitration. *Cambridge University Press*, p. 84.

6 Law (Rwanda) No. 005/2008 of 14/02/2008 on Arbitration and Conciliation in Commercial Matters (*O.G* No. Special of 06/03/2008).

7 of 1985 with amendments as adopted in 2006.

8 Moses, L. M. (2008), p. 199.

HCC (Commercial High Court, 15/07/2022), RS/INJUST/RCOM 00018/2022/CA (Court of Appeal, 29/05/2023), and RCOM 00049/2021/HCC (Commercial High Court, 12/04/2024).

In these cases, the courts merely declared the awards unenforceable. It is still too early to regard these cases as establishing a binding precedent. Nevertheless, arbitration practitioners in Rwanda remain uncertain about the legal position following the annulment of an arbitral award. In the absence of clearly established legislation or a binding precedent, Rwanda must decide which approach to adopt: should the courts decide the merits of the case, or should they refer it back to arbitration? This paper aims to contribute to this discussion and influence policymakers and legislators on the appropriate path forward, underscoring its practical relevance.

To produce this paper, a qualitative methodology was used. Data were collected through desk research, employing a doctrinal approach. This approach involves a systematic examination of legal rules, an exploration of the relationships between these rules, and the identification of problems and potential future developments.[9] The choice of the doctrinal method was motivated by its dominance in legal research.[10] Primary sources, such as legal texts and judicial decisions, and secondary sources, such as scholarly literature, formed the basis of the data collection process.

This paper is divided into four sections. After the introduction, the first section explores three competing doctrines on the treatment of cases after the annulment of an arbitral award. The second section examines the practice of setting aside arbitral awards under Rwandan law. The third section recommends the approach that Rwanda should adopt, and the last section concludes the paper.

1. THREE COMPETING DOCTRINES

The annulment of an arbitral award is a well-recognized legal practice across jurisdictions, including Rwanda, where Article 47 of Law No. 005/2008 of 14/02/2008 on Arbitration and Conciliation in Commercial Matters[11] provides for such a possibility. Similarly, various legal systems worldwide allow for the setting aside of arbitral awards. However, while this practice is generally accepted, the procedures and consequences following the annulment of an award differ significantly across jurisdictions. An investigation into jurisdictions' practices reveals three distinct doctrinal approaches: (1) the court that sets aside the award proceeds to hearing the case on its merits, which this paper terms as responding to the "denial of justice doctrine"; (2) the court sets aside the award and refers the matter back to arbitration, consistent with the "will of the parties doctrine"; and (3) the court remains silent, leaving the next steps ambiguous, a situation described here as the "silence doctrine". This section explores these three doctrines in detail.

1.1. Denial of justice doctrine

Under the denial of justice doctrine, the court that sets aside an arbitral award assumes the role of adjudicating the merits of the dispute or, more specifically, the part of the award that has been annulled. This approach is prevalent in jurisdictions such as France, where, once a court sets aside an award, it rules upon the merits of the case, adhering to the arbitrator's mandate, save where the parties agree otherwise.[12] The intuitive rationale for this approach would be rooted in the principle of avoiding a denial of justice. Historically developed to protect foreigners, the doctrine of denial of justice has evolved extensively and is now enshrined in numerous legal frameworks. For instance, Article 4 of the French Civil Code states that "*a judge who refuses to judge, on pretext of the silence, obscurity or inadequacy of the law, may be prosecuted as guilty of denial of justice*".

A similar provision exists under Rwandan law. Article 9(2) of Law No. 22/2018 of 29/04/2018 governing civil, commercial, labor, and administrative procedure,[13] provides that "*A judge cannot refuse to*

9 Hutchinson, T. (2006). Researching and Writing in Law (2nd), *Thomas Lawbook Co.*, p. 7.

10 Hutchinson, T. (2015). The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law, *European Law Review* 3, p. 131.

11 *O.G* No. Special of 06/03/2008.

12 French Code of Civil Procedure, Decree No. 81-500 of 12 May 1981 (*Official Journal* of 14 May 1981, amendment JORF of 21 May 1981), Article 1485.

13 *O.G.* No. Special of 29/04/2018.

decide a case on any pretext of silence, obscurity or insufficiency of the law". Under this doctrine, therefore, a judge's decision to determine the merits of an annulled arbitral award would ensure a comprehensive and timely resolution of the parties' grievances, thus fulfilling the mandate to avoid any denial of justice.

1.2. The will of the parties doctrine

Under the will of the parties doctrine, the court that sets aside an arbitral award refrains from addressing the substance of the dispute. Instead, the court respects the parties' initial agreement to resolve their disputes through arbitration. This approach is practiced in jurisdictions such as Poland, where a state court that annuls an award does not make a substantive ruling on the case.[14] Rather, it remits the case to arbitration for redetermination. The extent of the rehearing can vary, either addressing the entire dispute afresh or focusing solely on the specific aspect that was set aside.

The will of the parties doctrine is grounded in the principle of party autonomy, which is a cornerstone of contract law. This doctrine is famous in contractual matters and has been described as an axiom of contract law.[15] Scholars such as Albert van den Berg argue that even the drafters of the New York Convention intended to ensure that enforcing courts would not have the authority to reopen cases on their merits.[16] Arbitration is, after all, a contractual procedure designed to settle disputes based on the parties' agreement, and the principle of arbitration's contractual nature is and should be widely regarded as inviolable. This description is widely supported, and the principle of the contractual nature of arbitration has acquired an inviolate and sacrosanct arbitration rule.[17]

With regard to the procedure of setting aside an arbitral award, Courts in various jurisdictions have supported this doctrine by referring to the parties' autonomy. For example, in Ireland, courts have generally been reluctant to interfere in arbitration matters unless there is a compelling reason to do so.[18] In Hogan v St. Kevin's Co., the court affirmed that: "*Where the parties refer disputes between them to the decision of an arbitrator chosen by them … it is obviously and manifestly their intention that the issue between them should be decided …. finally by the person selected by them to adjudicate upon the matter*".[19] Similarly, in Nyutu Agrovet Limited v. Airtel Networks Kenya Limited, the Kenyan Court of Appeal emphasized that courts should respect the parties' decision to arbitrate their disputes, underscoring the contractual nature of arbitration. The Court of Appeal held as follows: "*The principle on which arbitration is founded, namely that the parties agree on their own, to take disputes between or among them from the courts, for determination by a body put forth by themselves*".[20] The Court of Appeal of Kenya added that the courts should respect the will and desire of the parties to arbitration.[21] Scholars also confirm that courts should assist in the arbitration to ensure the integrity of the arbitral process and protect the public interest but not interfere to safeguard the confidence of users of the arbitral system.[22]

Within the will of the parties doctrine, two sub-approaches exist. The first respects the parties' original will and allows for the dispute to return to arbitration. Here, it is about the past agreement of the parties that continues to govern the present and future actions. The second approach provides flexibility, allowing the parties to deter-

14 Linklaters, How Often are Arbitration Awards Set Aside? Analysis of Polish Case Law Shows that they Rarely Are, 24 May 2022 <https://www.linklaters.com/en/insights/blogs/arbitrationlinks/2022/may/how-often-are-arbitration-awards-set-aside#:~:text=7.24%25 of Polish awards are, arbitration awards were set aside> [Last seen 27/08/2024].

15 Kottenhapen, R. J. P. (2006). From Freedom of Contract to forcing Parties to Agreement, *12 Ius Gentium: Journal of the University of Baltimore Center for International and Comparative Law*, p. 2.

16 van den Berg, A. (1981). The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation. *Kluwer Law*, p. 358.

17 Nyanja, M. A. p. 33.

18 Wade, G. (2013). p. 41.

19 Ibid.

20 Nyutu Agrovet Limited vs Airtel Networks Limited, Civil Appeal No.61 of 2012 (2015) eKLR.

21 Ibid.

22 Kayihura, D. M., Munyentwari, C. U., Rutta, J. M. (2020). Striking a Balance Between Assistance and Interventionism: The Role of Courts in Rwanda-Seated Arbitrations. *Journal of International Arbitration*, 37(1). p. 143; Wade, G. (2013). p. 50.

mine the next steps, i.e., expressing a new will. Under this model, the parties may choose to refer the dispute back to arbitration or allow the court to render a decision on the matter.

This doctrine is the practice in jurisdictions like Switzerland, where, after setting aside an arbitral award, the court remits the dispute to the arbitration to make a new award.[23] The same is true in Germany, where section 1059(4) of the German Arbitration Act provides that "*The court, when asked to set aside an award, may, where appropriate, set aside the award and remit the case to the arbitral tribunal*". This section continues in the fifth paragraph that "*Setting aside the arbitral award shall, in the absence of any indication to the contrary, result in the arbitration agreement becoming operative again in respect of the subject matter of the dispute*".[24] In South Africa, the law permits either party to request the dispute be resubmitted to a new arbitral tribunal constituted in the manner directed by the Court.[25] The United States law is in the same line but with more details: either to refer back the dispute to the same arbitrator or a new arbitrator. This is provided for in Section 23(c) of the United States Revised Uniform Arbitration Act, stating that if the court nullifies an arbitral award on grounds other than the invalidity of the arbitration agreement, "it may order a rehearing" except if the ground for setting aside the arbitral award is corruption, fraud, or arbitration misconduct or partiality. In such cases, the rehearing must be before a new arbitrator.[26] The practice in these jurisdictions is in the application of the first sub-approach described above.

The second sub-approach, which offers more flexibility, is adopted in countries like Vietnam and the Netherlands. For instance, Article 71(8) of the Vietnamese Law on Commercial Arbitration allows the parties to either arbitrate again or litigate the case in court following the annulment of an award. A similar approach is in the Netherlands. According to Article 1067 of the Dutch Arbitration Act, if an arbitral award is set aside for any ground other than the non-existence of a valid arbitration agreement, the arbitration agreement remains in force, and the parties are permitted to return to arbitration unless they mutually agree otherwise.[27]

In China, Article 9 of the Arbitration Law provides that once an "*arbitral award is canceled or put in void under a rule by the People's Court, the parties concerned for the dispute may reach another agreement for arbitration and apply for arbitration or bring a suit in the People's Court*". The United Kingdom also offers flexibility, and depending on the parties' preferences and specific circumstances, parties can choose to continue with arbitration or litigation in court as they settle amicably.[28]

1.3. The silence doctrine

Under the silence doctrine, the court that sets aside an arbitral award does not provide any further guidance on how the parties should proceed. The court simply declares the award unenforceable but remains silent on what steps the parties should take next. This creates uncertainty, as the parties are left without clear direction on how to resolve their dispute following the annulment.

This approach is followed in jurisdictions like Armenia, where the law does not specify the procedural steps following the setting aside of an award.[29] Rwanda similarly adopts a silence approach. As is discussed in the next section, Rwandan courts have set aside a few arbitral awards without indicating the parties' next steps, leaving them in a state of uncertainty.

2. SETTING ASIDE AN ARBITRAL AWARD UNDER RWANDAN LAW

Under Rwandan law, the setting aside of an arbitral award is governed by the 2008 Arbitration Law. Article 47 of this law provides a comprehensive

23 Hokhoyan, A. (2019). What Happens when an Award is Set Aside? p. 6 <https://law.aua.am/files/2019/08/AH_Research_Setting-Aside.pdf> [Last seen 27/08/2024].

24 Germany Arbitration Act, Section 1059(5), 1 January 1998, as amended by the Civil Procedure Reform Act of 27 Jul. 2001 and the Law of Contracts Reform Act of 26 Nov. 2001.

25 South Africa Arbitration Act of 1965, Article 33(4).

26 Section 23(c) of the US Revised Uniform Arbitration Act, 2000.

27 Dutch Arbitration Act, Article 1067.

28 Meng, C., Wang, C. (2018). Vanishing Set-Aside Authority in International Commercial Arbitration. *International and Comparative Law Review*, 18, p. 129.

29 Hokhoyan, A. (2019), p. 6.

list of grounds upon which an arbitral award may be annulled, either upon the application of a party or at the discretion of the Court. Four grounds are available for a party seeking to set aside an award:

a. Incapacity of a party to the arbitration agreement, or invalidity of the agreement under the law to which the parties have subjected it, or failing any such indication under Rwandan law.

b. The party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or was otherwise unable to present his or her case.

c. The award addresses a dispute not contemplated by, or falling outside the terms of, the submission to arbitration or includes decisions on matters beyond the scope of the submission. In such cases, if the decisions on matters submitted to arbitration can be separated from those not submitted, only the part of the award containing decisions on matters not submitted may be set aside.

d. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement unless such an agreement conflicted with provisions of the law from which the parties could not derogate or, failing such agreement, was not in accordance with the law.

For the Court, two reasons are available:

a. The subject matter of the dispute is not capable of settlement by arbitration under the Rwandan Law.

b. The award conflicts with the public security of the Republic of Rwanda.

In relation to the subject matter of this paper, a few cases are available to guide the discussions. Our research identified four available cases where arbitral awards have been publicly set aside. These cases have been publicly discussed before the courts, rendering their contents part of the public domain. This circumstance permits a thorough examination of these cases without interfering with the principles of privacy and confidentiality ordinarily associated with arbitration proceedings.

The first case, RCOMAA 00043/2019/CA, was decided by the Court of Appeal on 06 December 2019. It involved two Chinese nationals engaged in business activities in Rwanda, including a jointly owned company. Following the arbitration proceedings, one party sought to annul the award, arguing that his right to defense had been compromised concerning certain evidence. The Commercial High Court, in RCOMA 00020/2018/CHC/HCC, set aside the award. Upon appeal, the Court of Appeal dismissed the appeal and upheld the lower court's decision. Notably, neither the Commercial High Court nor the Court of Appeal provided any indication as to the future course of action following the annulment of the award.

The second case, RCOM 00026/2021/HCC, was decided by the Commercial High Court on 15 July 2022. A dispute arose between two companies over a service agreement. The losing party applied to set aside the arbitral award, arguing that additional evidence was submitted after the deadline set by the arbitral tribunal and that the complaining party had not been granted the opportunity to respond to such evidence. The tribunal's reliance on the evidence, without affording the complaining party a chance to defend itself, was deemed to violate its constitutional right to defense. Consequently, the Commercial High Court annulled the award.

The third case, RS/INJUST/RCOM 00018/2022/CA, began in the Commercial High Court under RCOM 00034/2022/HCC. A party sought to annul an arbitral award rendered in a dispute that had already been amicably settled between the parties. On 28 October 2022, the Commercial High Court rejected the application, leading the applicant to file an appeal before the Court of Appeal via an extraordinary review procedure for manifest injustice. The Court of Appeal, in its judgment of 29 May 2023, set aside the award on the grounds of the non-arbitrability of the subject matter. As in the previous cases, the Court of Appeal did not provide guidance on the future proceedings following the annulment.

The fourth case, RCOM 00049/2021/HCC, was decided by the Commercial High Court on 12 April 2024. The applicant sought to annul an award issued by an ad hoc arbitral tribunal, citing violations of the right to defense and public policy. While the Court rejected the claim regarding the right to defense, it ruled in favor of the applicant on public policy grounds and annulled the award. The respondent applied for a review of the judgment due to manifest injustice. At the time of writing this paper, the outcome of the review had not

yet been determined. As with the prior cases, the Court did not specify what procedure should follow the annulment.

In conclusion, as demonstrated by the four cases examined, the courts annulled the arbitral awards without indicating the next steps in the resolution of the principal disputes. This raises the pertinent question of whether the parties should restart the arbitration proceedings. This issue is significant not only within the context of Rwandan law but also in various other jurisdictions where similar discussions have taken place, leading to diverse views. It is therefore relevant to offer recommendations on which approach Rwanda should adopt, thus providing a modest contribution to the discussions on the issue.

3. RECOMMENDED APPROACH

Examining practices across various jurisdictions reveals a lack of universal standards regarding the post-set-aside arbitration process. Some nations opt to remand the matter back to arbitration, while others permit the court that annulled the award to adjudicate the substantive issues of the case. While acknowledging the merits of the latter approach, this author advocates for Rwanda to adopt the former method, which involves referring the matter back to arbitration. This recommendation is underpinned by several compelling considerations.

First, it is crucial to honor the parties' original intent. The parties initially opted for arbitration, signifying their preference to resolve disputes outside of the judicial system. Therefore, when an award is annulled, this does not alter the parties' intention to settle their dispute through arbitration. Upholding this intent is vital, particularly in light of the principles of arbitration autonomy and the necessity to shield arbitration from undue judicial interference. It is important to note that annulling an arbitral award leaves the underlying dispute unresolved, thereby necessitating a realignment of the parties' initial arbitration intent to initiate a new arbitration process.[30] Engaging the court in substantive issues would, therefore, contravene the very rationale that prompted the parties to select arbitration as their preferred resolution method as several aspects of their choice would be contravened to. For instance, the limb of expertise would be destroyed.

Second, permitting the court to resolve substantive issues post-annulment may have undesirable consequences. Although empirical research in this area is lacking, it is a reasonable assumption that such an approach may encourage parties, particularly those on the losing side, to seek annulments not for legitimate reasons but as a strategic maneuver to escape their initial arbitration commitments. Such tactics would not only be against the fair practices of arbitration, such as efficiency and effectiveness but would also contradict the "law nature" of a legally concluded contract.

Third, in the absence of explicit guidance from Rwandan legislation, it is our considered view that a court exercising its authority to annul an arbitral award and subsequently adjudicate the merits of the case would be acting ultra vires. The parties' actions before the court are confined to seeking annulment based on the grounds enumerated in Article 47 of the Arbitration Law. Any attempt to adjudicate beyond the parameters established by the parties would grossly contravene Article 10 of Law No. 22/2018 of 29 April 2018, which explicitly states that "*a judge may not decide more than he/she has been asked to*".

While advocating for the revival of arbitration as the preferred approach, it is essential to acknowledge that this option is not devoid of challenges. Several issues may impact this recommendation. However, mitigative strategies can address these concerns.

One potential issue pertains to time considerations. Parties may be worried that restarting arbitration will extend the timeline for resolution. This concern may be alleviated by recognizing that the subsequent arbitration proceedings should focus exclusively on the specific issues that led to the annulment of the original award.

Another concern relates to expenses. Given that parties have already incurred costs associated with the initial arbitration, engaging in a second proceeding may impose additional financial burdens. While this concern is valid, its mitigation parallels the previous one: the new arbitration should

30 Jean Robert, M. B. (1983). L'arbitrage: Droit Interne et Droit International Privé. 5e ed. *Dalloz*. pp. 341-342.

only address the specific issues that resulted in the award's annulment. Therefore, while that specific issue may incur additional costs, it will not be the same as the total expenses associated with a comprehensive reevaluation of the entire dispute.

Additionally, there exists a concern regarding trust and confidence in the arbitrators. To preserve this vital element of arbitration, the tribunal involved in the annulled award must be distinct from the subsequent tribunal. No member of the first tribunal should serve in the second proceedings.

Lastly, when the basis for setting aside the award is rooted in a manifestly null and void arbitration agreement or one that is incapable of performance, it becomes evident that referring the dispute back to arbitration would be futile. This scenario serves as an exception that would empower the court that annulled the arbitral award to determine the substantive issues. This position mirrors practices in other jurisdictions, such as Belgium, where annulment of an award due to a void arbitration agreement forecloses the possibility of recourse to arbitration.[31]

To implement the aforementioned recommendations, two alternative courses of action are feasible: legislative action and judicial action. Both avenues are viable within the context of Rwanda's legal framework. Historically, Rwanda has adhered to a civil law system due to colonial influences, and this legacy continues to manifest in the current legal landscape, where legislation serves as a primary source of law. In this regard, the Rwandan legislature is urged to undertake legislative action to address the procedural lacuna regarding the implications of setting aside an arbitral award. Alternatively, given Rwanda's gradual incorporation of common law principles over the past three decades, a judicial approach that cements precedents related to the aftermath of arbitral award annulments is equally essential. Through this approach, the Rwandan judiciary is called upon to establish precedents that elucidate the post-annulment process in Rwanda.

CONCLUSION

The Rwandan law remains silent on the procedural steps following the annulment of an arbitral award. While the legislation provides for the possibility of setting aside such an award, it does not elaborate on the subsequent implications. In the sole instance to date where a few arbitral awards have been annulled, the judgments rendered did not address the ensuing course of action. However, a careful analysis of these judgments leads to two distinct interpretations:

First, the annulment of an award restores the parties to their original status, indicating that the underlying dispute remains unresolved. This persistence necessitates a resolution aligned with the initial intentions of the parties involved.

Second, the inclusion of an arbitration clause in the parties' agreement, followed by the actual submission of the dispute to arbitration, clearly reflects their intention to avoid judicial resolution. Their preference is for the dispute to be decided through arbitration rather than by the courts. Thus, in accordance with the well-established contractual principle of respecting the will of the parties, it is imperative that their original intent to utilize arbitration as a means of dispute resolution prevails.

In conclusion, based on the limited jurisprudence available, Rwanda aligns with the perspective that, upon setting aside an arbitral award, the court should refrain from adjudicating the matter on its merits. Instead, it is incumbent upon the parties, should they choose, to initiate a new arbitration process. This perspective is endorsed in light of the contractual principle emphasizing the autonomy and intention of the parties.

31 de Bournonville, P. (2000). Droit Judiciaire: l'Arbitrage. *Larciers*. p. 214.

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