

# Supreme Court confirms that inadequately justified arbitral award amounts to arbitrator misconduct

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## Facts

### Decision

In a recent Supreme Court case concerning an application by SPE Kyperountas (Civil Appeal 456/2012) dated 20 September 2019, the appellant appealed against a first-instance judgment in which he had sought to annul an arbitral award.

### Facts

The dispute related to the non-payment of a loan granted by the respondent to the appellant and a subsequent challenge of the amount owed. Arbitration had taken place in which the arbitrator had issued his decision in favour of the respondent.

At first instance, the appellant argued that the arbitrator had completely disregarded the evidence that he had presented to demonstrate that the amount owed was substantially lower than the amount claimed by the respondent. The appellant further argued that the arbitral procedure and the absence of a detailed justification or analysis of his arguments in the arbitral award rendered the whole procedure irregular.

The first-instance court recognised that the arguments relating to the amount owed had been advanced during the arbitration, but did not have the minutes of the procedure and rejected the appellant's arguments, stating that:

*The Court in proceedings such as these involving the challenge of the arbitrator's decision has no power to review the exercise of the arbitrator's discretion as long as the arbitrator acted within the confines of his powers and as long as the arbitrator was just towards both parties.*

### Decision

The Supreme Court proceeded to examine the arguments advanced by the appellant and explained that, at first instance, the appellant had essentially argued that the court should vacate the arbitrator's award on the basis of Article 20(2) of the Arbitration Act (Cap 4), which provides that:

*When the arbitrator or umpire has misconducted himself or has poorly handled the case or when the arbitration was conducted irregularly or the arbitral award was issued irregularly, the Court may annul the arbitration award.*

The Supreme Court examined the content of the arbitral award and observed that it referred to the identifying number of the loan and the amount owed. The court pointed out that it was obvious that there was no reference to the appellant's arguments or how the arbitrator had conducted the proceedings, which undoubtedly rendered the arbitral award unsubstantiated. In light of this finding, the court examined whether this meant that the arbitrator "had misconducted the proceedings".

The Supreme Court referred to the First Annex of the Cypriot Arbitration Act, which provides that:

- an arbitrator has the power to examine the parties under oath and consider all relevant documents presented; and
- arbitral awards must be in writing.

The Supreme Court reasoned that these provisions demonstrate that arbitration is a quasi-judicial process, citing the Supreme Court judgment in *Bank of Cyprus Ltd v Dynacon Ltd* (1999, 1 AAD 717), in which it was stated that "the role of arbitrators is quasi-judicial and that consequently an

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arbitral award must be appropriately justified in order to ascertain its reasoning and be subject to judicial scrutiny".

The Supreme Court criticised the conduct of the arbitrator, who should have referred to and evaluated the appellant's arguments even concisely and given reasons for his findings. These elements constitute the essential characteristics of an adequately reasoned decision. In light of the above, the Supreme Court concluded that the first-instance court had erred in assessing the arbitrator's conduct and allowed the appeal.

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