



Interim measures in Mauritius case denied – for now

Tom Jones 13 January 2017

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Mauritius (istock.com/extremetravel)

A tribunal has declined cross-applications for interim measures by a French-Mauritian businessman bringing the first ever treaty claim against Mauritius and the state itself – but left the door open for both parties to reapply at a later stage.

On 11 January, an UNCITRAL tribunal composed of **Lucy Reed, Jean Christophe Honlet** and **Vaughan Lowe QC** [refused](#)

http://res.cloudinary.com/lbresearch/image/upload/v1484325047/rawat_v_mauritius_order_on_interim_measures_11_january_2017_130117_163 to order Mauritius to advance the full costs of the claim or unfreeze the claimant's bank accounts and real estate to enable him to fund it himself. Nor would it order the state to release certain documents to third-party funders.

It further declined to enjoin Mauritius from aggravating the dispute through media campaigns and retaliatory measures against the claimant's family – but reminded both parties of their legal requirement to avoid action that could prejudice the rights of the other party.

A request by Mauritius for £3 million security for costs was also denied.

Dawood Rawat [brought the claim](http://globalarbitrationreview.com/article/1034915/first-treaty-claim-against-mauritius-to-proceed) <http://globalarbitrationreview.com/article/1034915/first-treaty-claim-against-mauritius-to-proceed> against Mauritius in 2015 over the state's "politically motivated" decision to nationalise a group of companies known as British American Investment Company Mauritius (BAICM) – including a bank called Bramer Bank. The case is seated in Brussels and administered by the Permanent Court of Arbitration by The Hague.

Rawat alleges that he is ultimately the owner or controller of the BAICM group and that his indirect ownership of shares is an "investment" under Mauritius's bilateral investment treaties with France and Finland.

The businessman also alleges that the state has waged a campaign of harassment against him and his family, after his daughters and their husbands were placed under criminal investigation and prevented from leaving the country. Rawat himself has fled to France.

Mauritius does not dispute that certain events alleged by Rawat have occurred but denies any violation of its BIT obligations, alleging that the freezing of his personal and business assets and related actions are part of an ongoing investigation of alleged Ponzi schemes orchestrated by him and family members involving money laundering and fraud of more than 1 billion Mauritius rupees (US\$15 million).

In his request for interim measures, Rawat – represented by Paris firm De Gaulle Fleurance & Associés and **Xavier Boucobza** of Paris South University – argued that the expropriation of his assets means he is not in a position to finance the claim, meaning that Mauritius should either pay the full costs of the jurisdictional phase of the case in advance, or lift its freezing orders in relation to its assets.

Mauritius, represented by Lalive, said it would seek termination of the case if Rawat did not contribute an equal share of the advance, pointing out that no other tribunal has ever ordered a respondent state to pay the investor's share of the costs advance.

In its 35-page decision, the tribunal chaired by Reed concluded that Rawat has other short-term options available to him to finance the next jurisdictional phase of the case and said that unfreezing his assets would come close to ruling on the merits of the case. The panel also rejected Rawat's application that it order Mauritius to disclose documents to allegedly interested funders, as he had not supported his request with the names of the funders and other details required to complete due diligence.

Turning to his application that it enjoin the state from aggravating the dispute, the tribunal said that even if Rawat's accusations are true, it did not perceive a risk of irreparable harm to him or his family's interests.

Any harm he ultimately proved would be compensated by damages, it ruled.

In its cross-application Mauritius relied on the decision of an ICSID tribunal in *RSM v St Lucia* to support its request for security for costs – noting that if Rawat was unable to pay the advance fee he would also be unable to satisfy an adverse costs award in the state's favour.

However, the tribunal found that Rawat's impecuniosity was not such to create "exceptional circumstances". It distinguished the case from *RSM v St Lucia*, which it said had been decided based on "a panoply of exceptional circumstances" – particularly the claimant's proven history of failing to comply with costs orders.

The tribunal said it did not consider it necessary to make a determination about Rawat's reliance on the France-Mauritius BIT's most-favoured nation clause – which he is using to import the provision for unconditional consent to arbitration from the state's BIT with Finland. This was because it had denied all of the applications for interim measures on non-jurisdictional grounds.

Dawood Rawat v Republic of Mauritius

Tribunal

- **Lucy Reed (UK) (Chair)**
- **Jean-Christophe Honlet** (<http://whoswholegal.com/profiles/58512/0/honlet/jean-christophe-honlet/>) (France) (appointed by the claimant)
- **Vaughan Lowe QC (UK)** (appointed by the state)

Counsel to Dawood Rawat

- De Gaulle Fleurance & Associés

Partner **Andrea Pinna** and associate **Hortense Fouchard** in Paris

- Professor **Xavier Boucobza** at Paris South University

Counsel to Mauritius

- Lalive

Partners **Veijo Heiskanen** (<http://whoswholegal.com/profiles/34703/0/heiskanen/veijo-heiskanen/>) and **Domitille Baizeau** (<http://whoswholegal.com/profiles/34704/0/baizeau/domitille-baizeau/>), with counsel **Laura Halonen** in Geneva

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