Neutral Citation Number: [2024] EWHC 484 (KB)

Case No: KB-2022-00681

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 March 2024

Before:

THE HONOURABLE MR JUSTICE MORRIS

- -

Between:

CRAFT DEVELOPMENT SCI **(suing by its provisional administrator Mr Ngoua Elembe Hiob)**	**Claimant**
- and –	
(1) ACTIS LLP (a firm) **(2) ACTIS AFRICA REAL ESTATE FUND 3 (a firm)** **(3) ACTIS AFRICA REAL ESTATE 3A LP (a firm)** **(4) ACTIS AFRICA REAL ESTATE 3 CO-INVESTMENT SCHEME LP (a firm)** **(5) ACTIS AFRICA REAL ESTATE 3c LP (a firm)** **(6) ACTIS GP LLP (a firm)**	**Defendants**
- and –	
DR MIRANDE NASAH **(trading as Mirande Nasah Solicitors)**	**Respondent**

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Barry Coulter (instructed by **Mirande Nasah, Solicitors**) for the **Claimant and the Respondent**
Charles Holroyd (instructed by **Charles Russell Speechlys, Solicitors**) for the **Defendants**

Hearing dates: 22, 23, 24 November 2022, 25, 26, 28 April 2023.

Further written submissions: 12 and 19 May 2023

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MORRIS

Mr Justice Morris :

Introduction

1. This is the trial of a preliminary issue in proceedings brought by the claimant, Craft Development SCI ("Craft") against Actis LLP and five other entities in the same group, the defendants. I refer to the defendants as "the Applicants". The proceedings have been brought by Mr Ngoua Elembe Hiob in his asserted capacity as provisional administrator of Craft. Dr Mirande Nasah is the solicitor acting for Mr Hiob and who issued the claim form in Mr Craft's name. The Applicants have applied to strike out the proceedings on the grounds that Mr Hiob does not have authority to act on behalf of Craft in these proceedings. Craft and Dr Nasah are the respondents to this application and are referred to, jointly, in this judgment as "the Respondents". On 28 June 2022 Master McCloud ordered that issue to be tried as preliminary issue.

2. This judgment is in the following sections:

   - Section (A) is a short summary of the background to the dispute: paragraphs 3 to 9.

   - Section (B) summarises the evidence before the Court: paragraphs 10 to 15.

   - Section (C) sets out the detailed factual background: paragraphs 16 to 61.

   - Section (D) sets out in more detail the judgment of the High Court of Wouri appointing Mr Hiob as provisional administrator of Craft ("the 8 March Judgment"): paragraphs 62 to 64.

   - Section (E) introduces the issue of Cameroon law and sets out relevant background to that issue: paragraphs 65 to 77.

   - Section (F) summarises the evidence of the two experts on Cameroon law: paragraphs 78 to 111.

   - Section (G) sets out the parties' submissions: paragraphs 112 to 153.

   - Section (H) contains my discussion and analysis of the issue: paragraphs 154 to 227.

   - Section (I) contains my conclusions: paragraphs 228 to 230.

   Transcript references are indicated by "Day/page".

(A) The dispute in summary

3. Craft is a Cameroonian company. There is a dispute in Cameroon between its majority and minority shareholders (Mr Kamdem and Mr Valère respectively) which is still being litigated. Mr Valère, the minority shareholder, has sought the appointment of a provisional administrator over Craft, so that Craft can bring an action against Mr Kamdem in Cameroon and/or the present action against the Applicants (who are English entities) in the English Court. Mr Kamdem opposes the appointment of a provisional administrator. Mr Valère was successful at the first

two levels of the Cameroon Court hierarchy (namely the Tribunal de Grande Instance de Wouri (which sits in Douala) ("the High Court of Wouri") and the Cour d'Appel du Littoral in Cameroon - the Littoral Court of Appeal ("the Court of Appeal"). Those courts have decided, in principle at least, that Mr Hiob should be appointed provisional administrator over Craft. Mr Kamdem has since appealed to the Supreme Court, which on 27 February 2023 rejected his application for a stay of the Court of Appeal's judgment.

4. On 1 March 2022, after Mr Valère's success before the Court of Appeal, the present proceedings were commenced by a claim form issued by Mirande Nasah Solicitors (i.e. Dr Nasah), bringing a claim in the name of Craft, suing by Mr Hiob in his capacity as provisional administrator of Craft. The underlying claim is for damages for breach of contract, unlawful means conspiracy and fraud. The Applicants are together a group comprising a London based private equity fund. Craft alleges that the Applicants reneged on their agreement with Craft to establish a joint venture for the purchase of land in Cameroon relating to a proposed shopping mall in Douala, Cameroon. As pleaded in the particulars of claim, the cause of action arose on 18 March 2016 and Craft relies on this date for limitation purposes.

5. In seeking to establish Mr Hiob's authority to act on behalf of Craft, the particulars of claim rely upon (1) the judgment of the High Court of Wouri dated 8 March 2021 (the 8 March Judgment), together with an English translation and (2) an "Extrait du Plumatif" (Extract of Court Records) of the Court of Appeal, together with an English translation, showing that at a hearing on 21 January 2022, the 8 March Judgment was upheld ("the 21 January Court of Appeal Decision").

6. By application notice dated 31 May 2022, the Applicants applied to strike out the claim on the ground that Mr Hiob (and thus Dr Nasah) did not have authority to act for Craft in bringing these proceedings. The Respondents dispute this. The preliminary issue turns on the status or effect of the judgments obtained by Mr Valère in the High Court of Wouri and in the Court of Appeal.

7. The Applicants' case is that these judgments have not caused Mr Hiob to acquire authority to act on behalf of Craft since they have not been served in the form which is necessary under Cameroon law in order to cause judgments to have substantive or coercive effect. The Respondents' case is that the formalities to which the Applicants refer were not necessary in order for Mr Hiob to be validly appointed and acquire authority to act on behalf of Craft by virtue of the judgments. The central issue to be determined at this trial is this issue of Cameroon law.

Court judgments in Cameroon

8. By way of initial background, I set out here some common ground in relation to court judgments in Cameroon:

   (1) A court will announce its decision orally in court.

   (2) The court will then provide an "Extract of Court Records"- a short, usually one-page, document which serves as information that the Court has passed a judgment in a certain case on a certain day. It records what decision was made, but does not contain the reasons. It has no legal force and cannot be executed.

(3) Judgment will need to be registered on payment of fees.

(4) Once that has happened, the Court sets out its detailed reasoning in a written document referred to as an "Expédition". The written document will have that word stamped on it in red.

(5) The final stage is the re-issue of the reasoned judgment in a document referred to as a "grosse". This is a document stamped on its face with the word in red "GROSSE" and at the end with some wording known as the "executory formula" ("formule exécutoire"). This wording is set out at paragraphs 75 and 76 below.

(6) In addition, and regardless of the foregoing, in general a judgment can be the subject of "voluntary execution" ("exécution volontaire"); that is, one party agreeing to comply with the judgment.

9. Decisions and judgments of different courts have different names: a "jugement" is a judgment of a first instance court; an "arrêt" is a judgment, on appeal, of the Court of Appeal; an "ordonnance" is an order made by a court on an ex parte summary procedure. Further common ground is set out in paragraph 159 below.

(B) The Evidence

Documents and translations

10. Much of the relevant documentation in the case is in French and translations have been provided. In many cases, these translations are not official, and in some cases, competing translations have been provided by the parties. At times, the standard and consistency of translation has been less than perfect. In other cases, there are official French and English language versions of the same document, each of equal status. In these circumstances I have done my best to understand the meaning of the written evidence and documents, and in doing so, I have at times taken into account my own understanding of the French language.

11. In this judgment, where there is no issue as to the meaning of a French term or its English translation, I refer to the English translation. Where the position might not be clear, I refer to the French term and, as necessary, the English translation.

The witnesses

12. As regards witnesses, the Respondents called evidence of fact from Dr Nasah and Mr Hiob. Dr Nasah and Mr Hiob each verified her or his witness statement and was then cross-examined by Mr Holroyd.

13. Dr Nasah briefly gave evidence orally and reliably. She frankly admitted that she was under pressure of the limitation period when issuing the proceedings on 1 March 2022.

14. Mr Hiob gave his evidence by CVP link from Cameroon and in French, with the aid of an interpreter. He is on the list of approved experts of the Cameroon courts. In general his functions range from management of companies to their recovery or

liquidation. He gave his evidence clearly and with patience. However at times and on important points he was evasive – at times he sought to avoid answering the questions asked. A particular example was his persistent refusal to answer a direct question that, to his knowledge, Mr Kamdem opposed his appointment from an early stage. I approach his evidence with a degree of caution.

15. Expert evidence on Cameroon law was called by each party – Dr Ernest Duga Titanji by the Applicants and Dr Claude Assira by the Respondents. I consider their evidence further in section (F) below.

(C) The Factual Background

Craft

16. Craft is a Société Civile Immobiliere (an "SCI") under Cameroon law. In the course of evidence, there was considerable debate about its specific legal form and its object, in the context of the application of the OHADA law on commercial companies. However, ultimately nothing turned on this, in the light of Dr Assira's evidence that the relevant provision of the OHADA law would apply in any event (see paragraph 108 below).

The Proceedings in Cameroon

17. On 14 December 2020 Mr Valère commenced proceedings against Mr Kamdem and Craft before the High Court of Wouri, seeking the appointment of a provisional administrator over Craft. The application itself emphasised (in two places) that it was urgent for a provisional administrator to be appointed.

The 8 March Judgment

18. On 8 March 2021, the High Court decided in Mr Valère's favour. Its decision was subsequently embodied in an "expédition" (the 8 March Judgment). The 8 March Judgment runs to 20 pages and contains the full reasoned judgment of the Court. It records that Mr Hiob was appointed provisional administrator of Craft for a period of 6 months. I set out more detail in paragraphs 62 to 64 below. The 8 March Judgment does not contain the "formule exécutoire" (in English "the executory formula"). On 1 April 2021 Mr Hiob took up his appointment as provisional administrator. The 8 March Judgment was served on Mr Kamdem on 8 April 2021.

19. In the meantime on 11 March 2021, on the application of Mr Valère, the Tribunal de Premiere Instance de Douala-Bonanjo ("the Douala Court"), by "ordonnance" dated 16 March 2021, made "*en référés*"[1], ordered the suspension of a general meeting of Craft called by Mr Kamdem for the dissolution of the company and due to take place on 12 March 2021. That order was stated to be "*exécutoire sur minute et avant enregistrement*": see paragraph 31 below.

20. According to a letter from Mr Kamdem's lawyers dated 22 April 2021, on 12 April 2021 the court bailiff at Douala drew up a report concerning Mr Hiob's taking office as provisional administrator; and on 21 April 2021 Mr Hiob caused to be published in

[1] "En referés" is a summary interlocutory procedure.

the Cameroon Tribune newspaper the operative part of the 8 March Judgment appointing him as provisional administrator.

21. In their letter of 22 April 2021, in response to a request from Mr Hiob for documents, Mr Kamdem's lawyers refused, responding that the 8 March Judgment was not enforceable as it stands ("*n'est pas exécutoire*"), because, under Articles 192 and 193 of the Cameroonian Code of Civil and Commercial Procedure, the three-month time period in which to appeal suspended enforcement of the Judgment ("*suspend toute exécution dudit jugement*"). It was not said expressly, on behalf of Mr Kamdem, that the absence of the executory formula was the reason for non-enforceability of the 8 March Judgment. Although (as explained in paragraph 159(2) below) it might be said that the absence of a grosse is implicit in Mr Kamdem's reliance on the non-expiry of the appeal time limit.

The appeal to the Court of Appeal in Cameroon

22. On 6 July 2021 (just within the three-month limit) Mr Kamdem filed an appeal against the 8 March Judgment with the Court of Appeal. He contended, inter alia, that Craft had been properly dissolved at a general meeting on 12 March 2021 and that a liquidator had thus been appointed. He further argued that the 8 March Judgment infringed the principle of "double degree of jurisdiction". The court below had ruled on the merits, without giving Mr Kamdem the ability to contest the case on the merits and without him having had sight of the documents and arguments. It is common ground that, if Mr Hiob had by this time acquired any authority to act on behalf of Craft, his authority was suspended by the filing of this appeal.

23. Despite the Douala Court order of 16 March 2021, Mr Kamdem also purported to put Craft into liquidation and to cause a liquidator to be appointed. Mr Kamdem succeeded in causing Craft to be registered as being in liquidation on the "Registre du Commerce et du Credit Mobilier" (translated as "the Trade and Personal Property Credit Register"). In this judgment I refer to it as "the RCCM". On 8 November 2021, a further appeal was filed or purportedly filed against the 8 March Judgment, this time by Craft acting by its liquidator. Although the status of this latter appeal is controversial, neither party relies upon it and so nothing turns on it for the purposes of this judgment.

The 21 January Court of Appeal Decision

24. On 21 January 2022, the Court of Appeal made its decision on Mr Kamdem's appeal, upholding the 8 March Judgment (the 21 January Court of Appeal Decision). Mr Valère obtained an Extract of Court Records which records that the Court of Appeal Decision was made on 21 January 2022. The Respondents rely upon this document, along with the 8 March Judgment, as vesting Mr Hiob with authority.

25. There is a document, produced at later dates, which purports to be the fully reasoned judgment of the 21 January Court of Appeal Decision. That document is odd and confusing. It appears to be, in part, in the form of an "expédition" stamped dated 25 July 2022; and in part in the form of a "grosse", stamped dated 22 July 2022. I refer to this document as "the unexplained double-stamped document". The first and last pages are duplicated. The first copy of the first page is stamped "expédition", whereas the second copy of the first page is stamped "grosse". The last page of the

document bears stamps appropriate for an expédition which indicate that it was issued on 25 July 2022, whereas the penultimate page bears stamps appropriate for a grosse which indicate that it was issued on 22 July 2022. The document thus appears to consist of two different documents mixed together and raises numerous questions. The Applicants do not admit the authenticity of this document. I say no more about this document nor the oddity of its form, as neither party relies upon it.

26. The position in relation to an expédition issued by the Court of Appeal is confused, to say the least. There are documents bearing different dates[2], and documents suggesting that there is also a grosse of the 21 January Court of Appeal Decision[3]. (There is also a grosse of the 8 March Judgment[4]). Whatever the true position, the Respondents do not contend that a grosse has ever been served, and *on the pleadings*, it is common ground that no grosse has been issued (either in the High Court or the Court of Appeal).

27. The Applicants' case is that unless and until the 21 January Court of Appeal Decision is rendered in the form of a grosse, which is then served, the Court's decision does not have any substantive or coercive effect on the parties and does not cause Mr Hiob to acquire authority to act on behalf of Craft.

The appeal to the Supreme Court of Cameroon

28. On 4 April 2022, Mr Kamdem filed an appeal to the Supreme Court of Cameroon against the 21 January Court of Appeal Decision. The *filing* of this appeal has no impact on whether or not Mr Hiob has acquired authority.

The present proceedings

29. Following issue on 1 March 2022, on 2 April 2022 the claim form in amended form and the particulars of claim in the present proceedings were served.

30. On 31 May 2022 the Applicants made their application to strike out the claim. On the same date, Mr Zangue, a Cameroon lawyer acting for the Applicants (and who had been acting for them in the underlying Douala Mall project) wrote an opinion, asserting that the 8 March Judgment needs an executory formula and setting out reasoning similar to that now advanced by the Applicants. In particular, he asserted, first, that the 8 March Judgment *could* be "voluntarily executed" by *Mr Kamdem* and *Craft*, and, secondly, that in this case the bailiff would have to serve a grosse on *Mr Kamdem* and *Craft*. On 10 June 2022 the Applicants applied to strike out the claim on the further ground that Dr Nasah has no authority. The subsequent procedural history of the present proceedings is set out in paragraphs 56 to 61 below.

The first extension of the mandate of the provisional administrator: the 15 July Order

31. On 15 July 2022, the President of the High Court of Wouri made an order (an "ordonnance") extending Mr Hiob's mandate for 6 months from 1 August 2022 ("the 15 July Order"). On this basis the mandate was extended to 1 February 2023. The Order was made on the ex parte application ("requête") of Mr Hiob dated 14 July

[2] See paragraphs 34 and 36 below
[3] See paragraph 41 below
[4] See paragraph 38 below

2022. It recited the 8 March Judgment, and the fact that, on appeal, the Court of Appeal had upheld the 8 March Judgment. The Order then went on to refer to the suspension of the "mission" of the provisional administrator due to the appeal against the 8 March Judgment and continued, in English translation:

> "Considering the time necessary for the provisional administrator to execute his mission;
>
> Consequently, we order the extension of the mandate of Mr Hiob… as provisional administrator of SCI CRAFT DEVELOPMENT for a period of six (6) months as from August 1st 2022
>
> We declare our order enforceable on minute and before registration"

In the Order itself in French, these underlined words are *"Disons notre ordonnance exécutoire sur minute et avant enregistrement".* In this judgment I refer, by way of shorthand, to an endorsement in these (or similar) terms as "the Sur Minute endorsement".

32. It appears that the 15 July Order was not served on any party, although Mr Kamdem became aware of it. As explained below, the Applicants' position is that it was improper for such an application to have been made by Mr Hiob on an ex parte basis.

33. On 7 October 2022, Mr Kamdem filed an appeal with the Court of Appeal against the 15 July Order and requested a stay of enforcement of that Order. The grounds of appeal are that Mr Kamdem was not called to the hearing contrary to Article 160-2(3) OHADA Uniform Act on Commercial Companies and Economic Interest Groups ("the OHADA law on commercial companies") and a failure to set out reasons. Mr Kamdem did not raise the absence of a grosse on the 8 March Judgment as a ground of appeal. These documents were formally served on Mr Hiob by the court bailiff on 9 October 2022. As a result any effect of the 15 July Order was suspended.

34. On 31 October 2022 Dr Nasah, on behalf of the Respondents, sent to the Applicants the unexplained double-stamped document, describing it in her covering email as "The Expédition of the Court of Appeal Judgment dated 21 January 2022". There is a further expédition of the 21 January Court of Appeal Decision dated 11 November 2022.

Application for a stay of the 21 January Court of Appeal Decision

35. On 11 November 2022 Mr Kamdem filed a request to the Supreme Court for a stay of execution of the 21 January Court of Appeal Decision. The request included Mr Kamdem's grounds of appeal along similar lines to those raised in his appeal to the Court of Appeal (see paragraph 22 above). On the same day, Mr Valère and Mr Hiob were served by the bailiff with a certificate recording the filing of that application, pointing out that the application suspends enforcement of the 21 January Court of Appeal Decision, "even if it had started" (In French *"suspend immédiatement l'execution, même commencé, de l'arrêt no 016 etc*"). The effect of this is that if (contrary to the Applicants' case) Mr Hiob had already acquired any authority, his

authority was now suspended. In any event, whatever the effect of the application for a stay in the Supreme Court, the parties are agreed that this Court should in any event go on to determine the preliminary issue.

36. On 16 November 2022 the Respondents sent to the Applicants the expédition dated 11 November 2022, which Dr Nasah described a "fresh copy of the Court of Appeal Expédition".

The striking off, and reinstatement, of Craft in the RCCM

37. In late November 2022 it appears that Craft was struck off the RCCM. As a result the present trial was adjourned. On 12 December 2022, Mr Valère applied to the Douala Court seeking relief against the Chief Registrar of the Douala Court ("the Chief Registrar") concerning the registration. The Chief Registrar is also the registrar for the RCCM. Mr Valère also sought an order that the appointment of the provisional administrator be recorded on the RCCM. On 14 December 2022 the Douala Court ordered (by "ordonnance") the reinstatement of Craft on to the RCCM, but declared inadmissible Mr Valère's further request to record on the RCCM the appointment of Mr Hiob as the provisional administrator. Subsequently on 20 December 2022, the Chief Registrar issued a certificate of non-deregistration of Craft from the RCCM.

38. On 16 December 2022 the High Court of Wouri issued a grosse of the 8 March Judgment and on 19 December 2022 the bailiff (the "Greffier") of that Court served the grosse on the Chief Registrar of the Douala Court, responsible for the RCCM.

Entry on the RCCM of appointment of Mr Hiob as Provisional Administrator

39. On 19 December 2022 Craft's entry on the RCCM was amended by the addition of a reference to the 8 March Judgment and the designation of Mr Hiob as its provisional administrator, and on 22 December 2022 the Chief Registrar issued a certificate of an extract from the RCCM to that effect. The Certificate of the extract reads as follows:

> "19.12.2022
>
> - judgment No 200/CIV of 08.03.2021 of the Wouri High Court
>
> - Appoints Mr Ngoua Elembe Hiob, Provisional Administrator of the Civil Real Estate Company CRAFT DEVELOPMENT"

Mr Kamdem's proceedings in the Douala Court to delete Mr Hiob from the RCCM

40. On 26 January 2023 Mr Kamdem applied urgently ("en référé") to the Douala Court against the Chief Registrar, seeking the deletion from the RCCM of references to Mr Hiob as provisional administrator, on the grounds (amongst others) that Mr Hiob could not claim to have started his mission because he did not have a grosse of the 8 March Judgment. On the same date the Douala Court issued a summons ("assignation en referé") to the Chief Registrar ("Mr Kamdem's Douala Court proceedings").

41. On 27 January 2023 the Chief Registrar put forward his submissions in response, attaching a grosse of the 21 January Court of Appeal Decision which he contended "contributed to the registration of the entry" of Mr Hiob as provisional administrator in the RCCM (in French "*la grosse de l'Arrêt .. qui a contribué à l'inscription de la*

mention: Designe sieur Hiob administrateur provisoire"). In submissions dated 31 January 2023, Mr Kamdem responded that the 8 March Judgment and the 21 January Court of Appeal Decision were not yet enforceable ("*non encore exécutoire*") because of his appeal and application for a stay to the Supreme Court on 11 November 2022 which suspends the "execution" of the two judgments and so Mr Valère had misled the Chief Registrar.

42. On 7 February 2023 Mr Valère applied to intervene in Mr Kamdem's Douala Court proceedings, and sought a stay of those proceedings, and on 10 February 2023 Mr Valère made written submissions in the proceedings. He submitted that the 21 January Court of Appeal Decision was "exécutoire" (translated at "to be complied with from the day it was pronounced until notification of the application for a stay"). Mr Hiob was already in office at the time that Mr Kamdem applied for a stay of the 21 January Court of Appeal Decision. He relied upon the fact that the President of the High Court of Wouri had, in July 2022, extended the mandate for 6 months as evidence that at that time the Court considered that Craft was already under provisional administration.

43. Mr Kamdem responded, in submissions dated 20 February 2023, contending, first, that the application to the Supreme Court for a stay made on 11 November 2022 had suspended the effects of the 21 January Court of Appeal Decision ("*a vu ses effets suspendus du fait du certificate de depot … le 11 Novembre 2022*"), and, secondly, that the entry of Mr Hiob on to the RCCM based on the "enforcement of the grosse of" the 8 March Judgment and of the 21 January Court of Appeal Decision ("*fondee sur l'exécution de la grosse du jugement… et celle de l'arrêt …"*) was not justified and should be struck off.

44. By ordonnance dated 22 February 2023, the Douala Court ordered the immediate deletion by the Chief Registrar of entries in the RCCM referring to the appointment of Mr Hiob as the provisional administrator. The order appears to have been made on the basis that Mr Kamdem had applied to the Supreme Court for a stay before Mr Valère had applied for the entry on the RCCM. The recitals to the order refer to the existence of the grosses of the 8 March Judgment and the 21 January Court of Appeal Decision. The order bears the Sur Minute endorsement. On the next day, 23 February 2023, Mr Valère filed an application with the Court of Appeal seeking a stay of the Douala Court's ordonnance.

The Supreme Court refuses a stay of 21 January Court of Appeal Decision

45. By ordonnance dated 27 February 2023, the Supreme Court dismissed Mr Kamdem's request for a stay of execution (see paragraph 35 above) of the 21 January Court of Appeal Decision, stating its reasons, inter alia, as being "in order to safeguard the interests of [Craft], the appointed provisional administrator must accomplish his mission" (emphasis added). This order also bore the Sur Minute endorsement. That decision was served on Mr Kamdem, Mr Valère and the Chief Registrar on 7 March 2023.

46. Subsequently on 12 April 2023, at the request of Mr Valère made in his capacity as a partner in Craft, the Chief Registrar issued an extract from the RCCM referring to the above events of 22, 23 and 27 February 2023 above, culminating in recording the Supreme Court stay and the need for the provisional administrator to accomplish his

mission. In this way the RCCM continues to refer to Mr Hiob as the provisional administrator of Craft "pursuant to the [8 March Judgment]".

47. In the meantime, on 24 March 2023 the Applicants wrote to Craft inquiring about the grosses of the two judgments and whether they should be served on Craft and Mr Hiob and whether Craft would be seeking to rely upon them at the trial in this Court. There was no reply.

The Court of Appeal refuses a stay of 15 July Order

48. On 24 March 2023 the Court of Appeal dismissed Mr Kamdem's application for a stay of the 15 July Order (see paragraph 33 above).

The second extension of the mandate of the provisional administrator: the 18 April Order

49. By ordonnance dated 18 April 2023 ("the 18 April Order"), the President of the High Court in Wouri ordered the further extension of the mandate of Mr Hiob as provisional administrator for 6 months from 19 April 2023.

The events leading up to the 18 April

50. The events leading up to the making of this order have been clarified in further witness statements from Dr Nasah, Mr Hiob and Mr Rufin Mayang, a Cameroon lawyer acting for Mr Hiob. On 10 April 2023 the initial application ("requête") for such an extension was drafted, and signed by Mr Hiob. That requête is a single document in two parts, comprising the application itself ("requête") and then, in draft, the order ("ordonnance") sought from the Court. That draft application is stamped as having been received by the High Court on 11 April 2023 and recording the fee having been paid. On 12 April 2023, Mr Mayang was told that the President of the High Court had declined to sign the ordonnance because there was no reference in the draft ordonnance itself to the earlier 15 July Order. As a result Mr Mayang amended the draft ordonnance and at the same time "fine tuned" the entire application. In his witness statement, Mr Mayang identified precisely the changes he made, both to the requête and to the draft ordonnance. On 13 April 2023 Mr Hiob signed the amended document (i.e. including changes to the draft ordonnance). On 18 April 2023 Mr Mayang took the fresh draft back to the Court and re-submitted it; the Court stamped that date on the requête. It is this version which the President approved and issued as the ordonnance on 18 April. Since the date of issue of the initial requête was 11 April, the Court also stamped that date as well on the right-hand side of the amended requête. A further stamp states that payment had been made on 11 April. This was done in order to acknowledge the fact that this was the same requête which had been amended and so that Mr Hiob should not be charged another fee. Mr Hiob and Mr Mayang state in their witness statements that the procedure followed was appropriate and perfectly regular. It is the Applicants' case that the requête and the ordonnance were drafted by the Respondents with a view to their deployment in these proceedings.

The 18 April Order itself

51. The 18 April Order, as made, is in two parts. The "requête" part contains a very lengthy explanation of the full history of the dispute, stating that the 21 January Court of Appeal Decision had been notified to Mr Hiob on 1 February 2022 and it was from that date that he had undertaken his mission. It refers to the commencement of the current proceedings in this Court, and the objection taken by the Applicants in relation to Mr Hiob's authority to bring these proceedings (including absence of a grosse). It rehearses Mr Hiob's arguments to the contrary, including that the Applicants' argument concerning a grosse is ill founded because, by reason of Article 33 UASRPEM[5], a grosse is only required in the event of forceful execution ("exécution forcée") and that OHADA does not apply. The 15 July Order had extended the mandate for 6 months from 1 August 2022 to 1 February 2023, but that extended mandate was interrupted in the period between the application to the Supreme Court for, and notification of the subsequent refusal of, the stay of execution (7 November 2022 to 7 March 2023). As at 7 March 2023 there remained approximately 10 weeks until the expiry of the first extension. An extension for a further 6 months was sought. The requête attached to it a number of documents including the application notice dated 31 May 2022 in this Court (see paragraph 6 above).

52. The second part, the "ordonnance" itself, recites that the 21 January Court of Appeal Decision is "to be immediately complied with voluntarily, and, if not, can be enforced" (in the French original, simply: "*immédiatement exécutoire*") unless there is an application for a stay of that Decision. Then, in parts which had been added to the original draft by Mr Mayang, the ordonnance continues that no appeal suspending the execution of the Court of Appeal Decision had been notified nearly 6 months after that Decision; the provisional administrator was entitled to act on behalf of Craft; and the 15 July extension was rightly obtained. The Court finds further that the execution of the 21 January Court of Appeal Decision had thereafter been suspended between 11 November 2022 (when Mr Kamdem applied to Supreme Court for a stay) and 27 February 2023 (when the Supreme Court rejected that application for a stay*).* It finds that Mr Hiob "*remains the legal representative* of the civil real estate company Craft" (in French *"demeure le mandataire judiciaire représentant la Société …*"). Finally, the ordonnance continues that Craft is a civil company governed by the provisions of the Civil Code and concludes by ordering the extension of mandate for 6 months from 19 April 2023 and bears the Sur Minute endorsement.

53. On 18 April 2023 Dr Nasah wrote to the Applicants' solicitors serving the 18 April Order and the fresh extract from the RCCM.

54. On 20 April 2023 Mr Kamdem filed an application to the Court of Appeal for a stay of execution of the 18 April Order and appealed against that Order. That application was served on Mr Hiob and Craft on 24 April 2023. The hearing of that application was fixed to be heard on 12 May 2023.

55. Mr Kamdem's grounds of appeal against the 18 April Order are the same as his grounds of appeal against the 15 July Order (see paragraph 33 above), namely that the parties and shareholders should have been called to the proceedings and the judge did

[5] See paragraph 73(3) below

not give reasons. He does not rely upon the issue of non-service of a grosse of the 8 March Judgment or of the 21 January Court of Appeal Decision as a ground of appeal.

The subsequent procedural history of the present proceedings

56. By an Order dated 28 June 2022, Master McCloud gave directions for this trial of preliminary issues. The issues identified for trial are:

(1) Whether Mr Hiob and/or Dr Nasah had authority to institute proceedings on behalf of Craft;

(2) If not, whether the claim should be struck out or dismissed; and

(3) Whether Dr Nasah warranted that she had authority from Craft to commence proceedings on its behalf and (if so) whether she should pay the Applicants' costs.

The third issue arises only in the context of costs, in the event that the Applicants are successful on the substantive issue (i.e. in relation to lack of authority).

57. The directions made by Master McCloud provided for an exchange of pleadings on the issues to be tried. On 27 June 2022 the Applicants served their Particulars of Defendants' case. By paragraph 4, they pleaded that in order for Mr Hiob to be appointed as provisional administrator and to gain authority to act, it would be necessary for either (1) a judgment containing an executory formula to be issued by a court in Cameroon and for such a judgment to be served by bailiff upon *Mr Kamdem* and *Craft* (the opposing parties to the underlying lawsuit) or (2) for Mr Kamdem and Craft to agree to execution of the judgment.

58. The essential dispute is that the Applicants say that (in the absence of consent), in order for judgments of the Cameroon Courts to have substantive effect, they need to be served by the bailiff in a form bearing the executory formula, whereas the Respondents contend that this is not necessary (at any rate in relation to the judgments at issue in this case).

59. This trial of the preliminary issue commenced on 22 November 2022. On the third day, 24 November 2022, I was informed that Craft had been struck off the RCCM, and on that basis, it was agreed that the trial could not proceed. The trial was therefore adjourned.

60. Once Craft had been restored to the RCCM (see paragraph 37 above), on 11 January 2023 the Respondents applied for the resumption of the trial and for further evidence to be admitted. By order dated 15 February 2023 I made orders for further disclosure and directed that the trial should resume in April.

61. The trial resumed on 25 April 2023 and on 28 April 2023 the parties made their closing submissions orally and in writing. On 28 April I made an order for the Respondents to provide witness evidence and disclosure relating to the circumstances surrounding the 18 April Order and a direction for further submissions. On around 11 May 2023 the Respondents provided the three further witness statements (see paragraph 50 above) and gave disclosure of documents relating to the 18 April Order.

On 12 May 2023 Mr Coulter provided written submissions on this material and on 19 May 2023 Mr Holroyd responded with further written submissions.

(D) The 8 March Judgment itself

62. The 8 March Judgment is the form of an "Expédition". The Court comprised three judges, including, Madame Dicky Ndoumbe épouse Mbangue, the President of the High Court of Wouri. It is stamped by the court and registered on 7 April 2021 on payment of 20,000 Central African francs and certified on 8 April 2021 by the Chief Registrar.

63. It is a long narrative judgment reciting the applicant's case, the background facts and procedure and then the reasoning. In the "facts and procedure", it records that the applicant, Mr Valère, asked for the appointment of a provisional administrator. The application was based on the alleged conduct of Mr Kamdem and Actis in relation to the Douala Grand Mall and the desire to take action against them in relation to that. In the application Mr Valère stressed the urgency of the need for the appointment of a provisional administrator; it was said to be "all the more urgent" because of the risk that Actis could at any time decide to sell the Grand Mall to third parties. Mr Valère asked for an appointment with a number of specified "missions", including initiating or pursuing any legal action against Mr Kamdem and against Actis (i.e. the Applicants). Significantly, Mr Valère additionally applied for an order for the provisional execution of the judgment to be delivered notwithstanding any appeal (In French "*Ordonner l'exécution provisoire du jugement à intervenir nonobstant toute voie de recours*"). The Judgment records that the Public Prosecutor made submissions (opposing the application) as did counsel for Craft and Mr Kamdem. The Court rejected Mr Kamdem's application, made on 8 March 2021 itself, to be provided with the documents submitted by the applicant and to be given time to put in a defence, but instead proceeded straight to judgment.

64. The Operative part of the High Court's decision reads (in approved translation) as follows:

> "-ON THE MERITS-
>
> —Whereas the plaintiff's claims are based on the appointment of a provisional administrator and the scope of his missions, as well as the provisional execution of this ruling;
>
> I-WITH REGARDS TO THE APPOINTMENT OF A PROVISIONAL ADMINISTRATOR
>
> —Whereas SCI CRAFT DEVELOPMENT was created according to deed no 15520 of 28 May 2015 of the directory of Maitre WO'O BEFOLO, notary in Douala with partners named TCHUMTCHOUA TOHOUO Valère and JIDJOUC KAMDEM Mathurin;
>
> —That Mr JIDJOUC KAMDEM Mathurin was appointed statutory manager for a renewable period of one year in accordance with Article 14 (2) of the Company's Articles of Incorporation,

—That the petitioner has conducted negotiations leading to the signing with the partner "ACTIS" of a letter of intent relating to the realisation of a project for the construction of a shopping centre dated 06 November 2015;

—That curiously, the implementation of the said project was carried out by the company "Douala Retail and Convention Centre" in short DRCC of which Mr. JIDJOUC KAMDEM Mathurin is the promoter to the detriment of SCI CRAFT DEVELOPMENT signatory of the above- mentioned letter of intent

—That moreover, the mandate of Mr. JIDJOUC KAMDEM Mathurin as manager of SCI CRAFT DEVELOPMENT has not been renewed since the creation of this company on 28 May 2015;

—That the latter has never convened a General Assembly and let alone communicated to his partner the annual summary financial statements, all things that have created a misunderstanding between the two partners;

—That the functioning of SCI CRAFT DEVELOPMENT is currently paralyzed due to this fact;

—That the appointment of a provisional administrator to ensure the provisional management of the affairs of the said company is imperative;

—There is therefore a need to appoint Mr. NGOUA ELEMBE HIOB, expert approved by the Littoral Court of Appeal (Mob.: 677.73.22.24), Provisional Administrator of SCI CRAFT DEVELOPMENT for a period of 5 months with the following missions:

-Convening the General Assembly of SCI CRAFT DEVELOPMENT;

- Establishing the annual summary financial statements in view of the inventory of the existing assets and liabilities;

-Initiating all procedures deemed necessary to preserve the interests of the company;

-Drawing up a written report on the operations of the provisional administration;

-Submitting to the court a report on the operations and progress of its quarterly mission;

-Whereas, given the scope and complexity of his mission, it is appropriate to fix his monthly remuneration at the sum of 2,000,000 FCFA to be borne by SCI CRAFT DEVELOPMENT;

II- WITH REGARD TO PROVISIONAL EXECUTION

—Whereas the plaintiff has requested provisional execution on the grounds that the current dispute is of a contractual nature arising from the company's incorporation contract;

—But whereas in the current case, it is all about compensating for a failure or dysfunction of a management body;

—That this request does not consequently follow the contours of Article 3 of Law n° 92/008 of 14 August 1992, amended by Law n°97/018 of 17 August 1997 laying down certain provisions relating to the enforcement of court decisions;

—That this law speaks of a contractual debt due;

—That there is no need for provisional execution of this judgment;

—Whereas it is necessary to order the publication of this decision at the behest of the designated provisional administrator within fifteen (15) days from the date of service;

—Whereas the defendants have been unsuccessful in the proceedings and should be ordered to pay the costs in application of Article 50 of the Code of Civil and Commercial Procedure;

-ON THESE GROUNDS-

—In a public and adversarial ruling with regard to the parties, in a civil chamber, at first instance, as a panel and with the unanimity- of the members;

—Admits Mr TCHUMTCHOUA TOHOUO Valère in his action;

—Declares it partially founded;

—-Designates Mr. NGOUA ELEMBE HIOB, expert approved by the Littoral Court of Appeal (Mob. 677.73.22.24), Provisional Administrator of SCI CRAFT DEVELOPMENT for a period of six months with the following missions:

-Convening the General Assembly of SCI CRAFT DEVELOPMENT;

- Establishing the annual summary financial statements in view of the inventory of the existing assets and liabilities;

-Initiating all procedures deemed necessary to preserve the interests of the company;

-Drawing up a written report on the operations of the provisional administration;

-Submitting to the court a report on the operations and progress or its quarterly mission

- Fixes the monthly remuneration of the Interim Administrator to be borne by SCI CRAFT DEVELOPMENT at the sum of 2,000,000 FCFA

-Provides that the Provisional Administrator shall submit to the court a report on the operations and progress of his mission every three months.

- Orders the publication of the present decision in a legal gazette within fifteen (15) days from the date of service, at the request of the appointed Provisional Administrator

-Declares that there is no need for provisional execution of this judgment;

- Condemns the defendants to pay the costs;

-Thus made, judged and pronounced in public hearing on the same day, month and year as above;

And sign on the minutes, the President and the Registrar, approving lines crossed words and Initialled margins good./-

THE PRESIDENT MEMBER I

MEMBER II THE REGISTRAR"

(emphasis added)

The original French text of the foregoing underlined passages is set out at Annex 1 to this judgment.

(E) The Issue of Cameroon law

The dispute between the experts in summary

65. In outline, the dispute is as follows:

(1) Dr Titanji's view is that in order for a judgment or decision of a Cameroon Court to have substantive or coercive effect on a party it is necessary (unless the Court orders otherwise) for a judgment containing the executory formula to be issued (i.e in the form of a grosse), and for the grosse to be served. Dr Titanji relies primarily on section 11[6] of Law No. 2006/0015 of 29/12/2006 on Judicial Organisation together with section 285 of the Code de Procédure Civile et Commerciale ("CPCC"). In his view, the appointment of a provisional administrator involves the exercise of the coercive power of the state over a company (here, Craft).

(2) Dr Assira's view is that Section 11 of Law No. 2006/0015 does not apply to the judgments in the present case as he considers that provision only applies to judgments which are "subject to enforcement" (i.e. which can be implemented by forceful means of execution such as seizing assets etc). The judgments in the present case, he says, are not subject to enforcement because Mr Hiob cannot be compelled to act as administrator. Dr Assira considers that every court decision is enforceable and immediately applicable to the parties, unless the law provides otherwise. His view is therefore that both the High Court and the Court of Appeal decisions were immediately binding and effective to appoint Mr Hiob and there was no need to serve a grosse.

The Court's approach to foreign law

66. The approach of this Court to deciding questions of foreign law is set out in the judgment of Mr Justice Simon (as he then was) in *Yukos Capital S.a.r.L v OJSC Oil Company Rosneft* [2014] EWHC 2188 (Comm) [2014] 2 Lloyd's Rep 435 at §§24 to 30. The principles, relevant to the present case, can be summarised as follows:

[6] In the French text "Section 11" is rendered as "Article 11".

(1) The Court is required to determine the foreign law as a question of fact on the basis of evidence deployed by the parties, according to the usual civil standard.

(2) It is not the Court's function to interpret codified provisions. The Court's task is to determine how the foreign court in question has interpreted them or would interpret them, in the light of the evidence of the expert witnesses. If the law is contained in a code or written form, the question is not as to the language of the written law, but what the law is as shown by its exposition, interpretation and adjudication.

(3) The burden of proving the foreign law rests on the party seeking to establish the law.

(4) The task of the expert evidence is to interpret the legal effect of the foreign law in order to convey to the English court the meaning and effect which a court of the foreign country would attribute to it, if it applied correctly the law of that country to the questions under investigation by the English Court.

(5) The degree to which the English court can put its own construction on the foreign code arises out of, and is measured by, its right to criticise the evidence of the expert witnesses; and once the foreign law is before the Court, the Court is free to scrutinise the witness and what he says, as it can on any other issue of fact.

(6) If there is a clear decision of the highest foreign court on the issue of foreign law, other evidence will carry little weight against it.

(7) In determining the question of foreign law, the Court is entitled and may be bound to look at the source material on which the experts express their opinion.

(8) Considerable weight is usually given to the decisions of the foreign court as evidence of foreign law. But the court is not bound to apply a foreign decision if it is satisfied, as a result of all the evidence, that the decision does not accurately represent the foreign law.

The expert witnesses

67. The Applicants called Dr Titanji. He provided an expert report dated 26 September 2022 and a supplemental report dated 10 November 2022 responding to Dr Assira's report and addressing other issues. He gave live evidence and was cross-examined extensively by Mr Coulter.

68. Of the two experts, Dr Titanji was more measured and polished as a witness. His reports were well written and he gave oral evidence clearly. However, there were significant inconsistencies and weaknesses in his evidence. His evidence about service of a grosse of a judgment appointing a provisional administrator was muddled and changed over time. His evidence about voluntary execution – whether it could happen before, or only after, service of a grosse - was inconsistent. He did not address the fact that the application for provisional execution was refused in the 8

March Judgment nor the reasons why. In oral evidence he struggled to explain what is meant by "exécution forcée" or to distinguish "substantive legal effect". There was confusion in his evidence about when he first saw the 15 July Order - his oral evidence was inconsistent with what he had said about this in his supplemental report.

69. The Respondents called Dr Assira. He provided an expert report dated 10 October 2022. His report was in French, - and a translation was provided, which as explained below was, in places, confusing. He gave live evidence and was cross-examined by Mr Holroyd.

70. Dr Assira's expertise appears to lie more in the field of criminal law. The manner in which he gave his oral evidence was, at various times, discursive, evasive and even obstructive. The clarity of his evidence was impeded by the fact that, for the most part, he gave evidence through an interpreter, whilst at some points reverting to English. This caused confusion. He was not entirely clear about whether it would be possible to have an executory formula on the 8 March Judgment. He was wrong that the French version of Cameroon statutory texts take precedence over the English version. He had not considered the extension orders and he was combative and obstructive about the applicability of the OHADA law on commercial companies (see paragraph 73(4) below). However he made some points of significance. He was the only one to point out the dual meaning of the word "execute" both in English and French, and he was adamant throughout his evidence that a judgment appointing a provisional administrator is fundamentally different in kind from a judgment directly ordering a party to do or pay something.

The law of Cameroon

Some background

71. The background to the legal system in Cameroon is that, historically, there has been a French-speaking part of the country and an English-speaking part of the country. In the former there was a civil law system; in the latter an English common law system. The country remains divided between areas where the French system applies and areas where the common law system applies. In the French-speaking part of the country, court decisions are not a direct source of law, with the exception of decisions of the Supreme Court. Lower court decisions have no binding force on other courts.

72. The hierarchy of laws in Cameroon is that the Constitution ranks the highest, below which there is a descending order of laws: statutes, decrees and ordinances and other delegated legislation. All statutes are published in both English and French and both languages have equal status. The Constitution provides that ratified conventions and treaties override domestic laws. The Organization for the Harmonisation of Business Law in Africa (OHADA) treaty of 17 October 1993 on the harmonization of business law in Africa is one such treaty, relevant to the present case.

Relevant statutory provisions of Cameroon

73. In the present case, there are a number of relevant (or potentially relevant) statutory provisions as follows:

(1) Law No. 2006/015 of 29/12/2006 on Judicial Organisation. Section 11 is set out in paragraphs 75 and 76 below.

(2) Law No. 92/008 of 14 August 1992 (as subsequently modified) relating to the enforcement of court judgments. This deals with, inter alia, appeals and the procedure for stay of execution of court judgments, and provisional execution.

(3) The OHADA Uniform Act organising Simplified Recovery Procedures and Enforcement Measures ("UASRPEM"). This is a measure made under the OHADA Treaty for "simple modern common rules". Article 10 of the OHADA Treaty provides that such Uniform Acts apply directly to the member states.

(4) The OHADA Uniform Act on Commercial Companies and Economic Interest Groups ("the OHADA law on commercial companies").

74. In addition there is the CPCC. This is the French code applying in the French-speaking parts of the country. The evidence on its applicability was unclear. On the one hand, Dr Titanji's view was that it is generally no longer correct to seek to apply provisions of the CPCC in relation to issues concerning the status, effect or execution of judgments, because this is an area in which Cameroon has legislated further (under Article 68 of the Constitution). On the other hand, later in his report Dr Titanji sought to rely on its provisions, and in particular Article 285. Dr Assira also referred to the CPCC.

75. Central to the issue in this case is Section11/Article 11 of Law No 2006/0015. In French, the provision states:

> "Article 11. Les expéditions des arrêts, jugements, mandats de justice ainsi que les grosses et expéditions des contrats et tous actes susceptibles d'exécution forcée, sont revêtus de la formule exécutoire ainsi introduite:
>
> «République du Cameroun»
>
> «Au nom du peuple camerounais»
>
> et terminée par la mention suivante :
>
> «en conséquence, le président de la République mande et ordonne à tous huissiers et agents d'execution sur ce requis, de mettre le présent arrêt (ou jugement, etc...), a exécution, aux procureurs généraux, aux procureurs de la République, d'y tenir la main, a tous commandants et officiers de la force publique, de prêter main forte lorsqu'ils en seront légalement requis ».

76. The English version states as follows:

> "Section 11 Copies of judgments and judicial warrants, together with engrossments and copies of contracts and all

> documents capable of enforcement, shall bear the executory formula introduced as follows:
>
> "Republic of Cameroon"
>
> "In the Name of the People of Cameroon"
>
> and closed with the following words:
>
> "Wherefore, the President of the Republic commands and enjoins all bailiffs and process-servers to enforce this judgment (or order, etc.), the Procureurs General and the State Counsel to lend them support, and all commanders and Officers of the Armed Forces and Police Forces to lend them assistance when so required by the law".

Section 11 replaces section 61 of the CPCC which is in identical terms.

77. At Annex 2 to this judgment I set out provisions of other relevant statutory provisions: the OHADA Treaty, UASRPEM, the OHADA law on commercial companies, Law No. 92/008 and provisions of the CPCC.

(F) The expert evidence

78. In this section I summarise the main points in the evidence of the experts. However I do not duplicate particular aspects of their evidence to which I refer in the course of discussion and analysis (section (H)).

Dr Titanji's evidence

79. In his first report, Dr Titanji characterised Section 11 as "a mandatory provision". The effect of Section 11 is that the executory formula "must be affixed [to] a judgment in order to make it enforceable." Under Cameroon law, in order for a judgment to have substantive legal effect, it must be executed. In the absence of voluntary execution (i.e. one party agreeing to comply with the judgment), this can only be done by service of a grosse. A judgment cannot have "coercive effect" on a party unless and until a grosse has been formally served by bailiff on that party. Thus he took the view that **"**substantive legal effect" and "coercive effect" amount to the same thing.

80. The 'execution' of a judgment has a "wider meaning" in Cameroon civil law than in common law, in the sense that "[i]t includes steps taken in order to render a judgment binding and enforceable (i.e. in order to cause it to have coercive effect)." He identified two forms of execution: (i) voluntary execution where one party - the 'losing' party - agrees to comply with the judgment and (ii) through service of a grosse. His evidence about when, and by whom, voluntary execution can take place was not consistent.

81. He illustrated this with the example of a child custody dispute in which the court hands down a judgment holding that Parent A should have custody of the child and orders Parent B to surrender the child to A. At that point "B does not […] come under any obligation to surrender the child." It is only once a grosse has been obtained and served by the bailiff "that B becomes under a legal obligation to surrender the child."

Under cross-examination[7], Dr Titanji qualified his evidence to say that say that the expédition of a judgment creates "prima facie obligations" on the losing party. In his example of a child custody battle, the parent who surrenders the child upon service of the expédition could recover the child before the time for lodging an appeal expires and would not be in breach of any court order. He gave evidence that he used the terms 'enforce' and 'execute' interchangeably. But he seemed to accept that the grosse is about enforcement. He did not appear to recognise any difference between an obligation which is binding and enforcement of that obligation[8]. However in re-examination[9], he said that his use of 'prima facie' in this context meant "there are things in that judgment that are indicative of what the Court would want if the other conditions are fulfilled."

82. He based his conclusion on four specified legal instruments. Section 11; Article 4 of Law No. 92/008; Articles 28 and 29 of UASRPEM; and Section 285 CPCC, although earlier in his report, he expressly stated that the CPCC no longer applies in this area. The phrase in section 285 "mis à exécution" ("sought to be enforced") "encompasses (among other things) taking the steps necessary to cause a judgment to have substantive or coercive effect".

83. There are exceptions to Section 11. A court can subject a judgment to provisional execution (also referred to as provisional enforcement), in which the judgment is delivered in the form of a grosse directly and must carry the express stipulation that it can be executed provisionally irrespective of an appeal. There are also other types of court decisions that are neither "substantive or final" e.g the appointment of an expert by the Court to assist it; and an order which is "internal to the Court process".

84. Applying these principles to the present case, Dr Titanji stated that it is clear, as a matter of Cameroon law, that Mr Hiob has not been vested with authority to act on behalf of Craft.

85. In the absence of voluntary execution, it is in the circumstances impossible for Mr Hiob to have been appointed or to have acquired any authority to act on behalf of Craft. This was because no grosse of both judgments had been served. His evidence about who should be served with the grosse was not consistent; see paragraph 181 below.

86. He disagreed with the contention that the executory formula is only required in cases where a "forceful execution" is necessary. In his view, there are only two types of execution: voluntary execution ("exécution volontaire") and non-voluntary execution. This non-voluntary execution can in French be referred to as "exécution forcée" and in English it is typically referred to simply as "execution". In his view "exécution forcée" means "substantive legal effect".

87. The appointment of Mr Hiob would involve the use of the coercive power of the State. The appointment of a provisional administrator involves an intervention by the Court in the internal affairs of the company. When a provisional administrator is appointed, he or she acquires powers which would otherwise belong to the company's

[7] Day 1/29
[8] Day 1/33
[9] Day 1/53

directors. In the absence of voluntary execution, this cannot be in achieved in Cameroon law without formal service of a document in executory form which invokes the power of the state.

88. He also questioned the Respondents' reference to Mr Hiob executing the judgment as, in his view, only a party to the underlying proceedings can execute a judgment.

89. As regards the 15 July Order, Dr Titanji addressed this in his supplemental report, where he said that the Order had been available to him at the time of writing his first report, but that he had not needed to address it. However in cross-examination, he resiled from that, saying that at the time that he received documents to write the first report, the 15 July Order "was not part of it"[10] .

90. In his view the Court was wrong to make the 15 July Order for a number of reasons. First, the use of the ex parte procedure was contrary to Article 160-2(3) of the OHADA law on commercial companies, because that law required the parties to be called to a hearing. Secondly, an extension was unnecessary as Mr Hiob's mandate as provisional administrator had not commenced. In re-examination[11], he expanded by saying that this *was* a reference to the fact that there was no grosse for the original. Thirdly, the standard of review in an ex parte order is not very high. Fourthly, the application did not refer to the outstanding appeal against the Court of Appeal Decision; and finally, the 15 July Order was not in "the usual form". In oral evidence, however, he agreed that nevertheless the Court had jurisdiction to make the order, had made the order and that, until it is set aside, it is an applicable order and it creates an obligation or gives a right[12]. He could not answer the question why, if there had been no proper appointment in the first place, the High Court of Wouri would extend the mandate.

91. As regards Section 11, it is not limited to judgments that are "subject to enforcement"; it applies to all judgments. His evidence was that the words in Section 11 "and all documents capable of enforcement" does not cut down the previous reference to judgments, rather they serve to incorporate documents that "do not emanate from the Courts of Cameroon [… e.g.] foreign judgments and foreign and domestic arbitral awards." The judgment has its binding force when delivered in the form of a grosse unless otherwise stated by the judge. All judgments are therefore "susceptible to enforcement" if they are issued in the form of a grosse with the executory formula.

Dr Assira's evidence

92. Dr Assira's report is French. A certified translation was provided. I raised concerns about the accuracy and consistency of the translation where certain French words in the report were, at different points in the English text, translated differently - in particular, "exécution", "exécution forcée" and "titre exécutoire". Where I have concerns about the English translation of his evidence, I use the French terms in the first place.

93. In his report Dr Assira summarised his evidence as:

[10] Day 1/48
[11] Day 1/59
[12] Day 1/48-49

(1) The 8 March Judgment upheld by the 21 January Court of Appeal Decision is enforceable and confers on Mr Hiob the legitimate power to bring any action before any court of his choice until the end of his term of office, the duration of which shall be determined by the Court.

(2) Mr Hiob did not require the consent of the parties to the proceedings to comply with the order of the High Court as upheld by the Court of Appeal.

(3) Neither the expédition nor the grosse of the 21 January Court of Appeal Decision needed to be served on Mr Kamdem.

(4) The 15 July Order extending Mr Hiob's mandate proves unequivocally that the 8 March Judgment is enforceable, as the Court would not have extended an invalid mandate.

94. The executory formula is a mandate allowing the forces of law and order to enforce a court decision or an act which is subject to compulsory execution. It is wording endorsed on some official documents which convert them into a "titre exécutoire"[13]. "Titre exécutoire" is an act enabling a creditor to pursue a debtor in "exécution forcée"[14] against his property. It must be stamped at the end of a judgment or ruling which is subject to "exécution forcée". "Exécution forcée" of legal decisions is opposed to "exécution volontaire" (voluntary execution). "Exécution forcée" occurs when the person who is ordered by a judgment to do something (pay a sum of money, for example) does not do it voluntarily. The person can then be forced to comply by calling on a bailiff who can if necessary use the assistance of the police. This principle is enshrined in Article 29 UASRPEM which states that "the enforcement formula entails to a direct requisition of the force of law and order". The judicial officer has to ensure that the court order is endorsed with the executory formula. Without the executory formula the officer cannot enforce the decision in a forceful way. "It is the executory formula which converts the judgment into a "titre exécutoire"".

Section 11

95. As regards Section 11, Dr Assira's view is that the executory formula is not necessary for all judgments but only for those which are "subject to enforcement" (French, "susceptible d'exécution forcée"). In cross-examination he maintained that those words qualified all the words in Section 11 from "les expéditions…." to "…et tous actes" and including "jugements". The scope of application of the executory formula is thus limited to acts and decisions that generally involve a debtor-creditor relationship and impose on the former the performance of an obligation, such as the payment of a debt. The implication of the construction of Section 11 which Dr Assira endorses is that not all judgments are capable of enforcement.

96. Dr Assira described[15] the executory formula as "a protection measure to uphold the rights of individuals," which is added to the judgment "later, after the decision has been made, in order to make sure that the judge has checked that the person in question has been notified, that there hasn't been any appeal, that they have been

[13] Variously translated as "enforceable title" or "enforcement order". In the English text of Article 33 UASRPEM, it is rendered as "writ of execution"
[14] Variously translated as "compulsory execution" or "forceful enforcement" or "forced execution"
[15] Day 4/40

informed of the decision, and therefore that the judgment is final." He went on: "And if this decision has not been complied with voluntarily, then steps are taken through [the executory] formula to make sure that the decision is complied with by force, using […] a bailiff."

97. However provisional administration is a procedure aimed at appointing a third party by a judicial authority to replace the legal bodies of the company. He said "Judgments appointing experts or provisional administrators are not subject to "exécution forcée" because an expert cannot be forced to accept his mission". The provisional administrator is a judicial expert approved by a court and registered on a list from which he is chosen on the basis of competence. If he does not want, or no longer wants, the assignment he can refuse it outright or give it up[16].

98. Neither the 8 March Judgment nor the 21 January Court of Appeal Decision needed to be endorsed with the executory formula in order to have "caractère exécutoire" (translated as "substantive legal effect"). A grosse would serve no purpose in the case of an appointment of a provisional administrator[17].

Exécution forcée

99. "Exécution forcée" means seizing goods or attaching money in a bank account. He agreed that absent the executory formula (or other special wording) there can be no "exécution forcée" and no means of forceful execution can be used[18]. He also seemed to accept that adding the executory formula has the same effect as where an ordonnance has added the Sur Minute endorsement. The executory formula is to allow seizure of goods or money i.e. exécution forcée[19].

100. The endorsement of the executory formula is not the thing which gives any court decision its binding force. Every court decision has "caractère exécutoire" (here, translated as "enforceable") and is immediately applicable to the parties unless the law provides otherwise.

Double degree of jurisdiction

101. The concept of double degree of jurisdiction means that a party is entitled to have their case heard twice, even if the appeal is demonstrably unmeritorious. Mr Kamdem's appeal against the 8 March Judgment had the effect of suspending the execution (French: l'exécution) of the provisional administrator's mandate until the decision of the Court of Appeal. As Mr Kamdem's appeal against the 8 March Judgment was not successful, the Court of Appeal Decision was "exécutoire"[20] as soon as it was pronounced, because the appeal to the Supreme Court does not suspend the execution of the contested decision.

102. In cross-examination, Dr Assira agreed that part of the concept of double degree of jurisdiction is that a person should not suffer adverse consequences because they have exercised their right to go to the second level of the court. This applied in a case of

[16] Report §§43 and 44
[17] Day 2/72
[18] Day 4/24
[19] Day 4/28-29, and 30
[20] Translated variously as "enforceable" or "immediately enforceable"

debtors and creditors, which he categorised as a decision that was susceptible to forced execution; but not in the case of the appointment of a provisional administrator. In that case, the decision will cease to be "exécutoire" once an appeal is lodged, so until the time to lodge an appeal has expired and no appeal has been lodged the appointee has a "fragile mandate" but a mandate nonetheless[21]. The appointment of a provisional administrator is different, as it relates to status. A judgment appointing a provisional administrator pre-grosse has power and legal force to impose the administrator on the company. The principle of double degree of jurisdiction has exceptions. The administrator can start execution voluntarily and if someone appeals, that is a risk for the person who has started. The difference is that it is not possible to have a "forced execution" of the appointment of a provisional administrator.

103. He was asked about a hypothetical scenario of a provisional administrator who contracts on behalf of the company with a third-party after a first-instance judgment, but before the deadline to lodge an appeal passes. He said if the contract was made before the lodging of the appeal, it would be valid; if made after lodging, it would not be valid. Mr Holroyd suggested that, were that true, it would offend double degree of jurisdiction. Dr Assira considered double degree of jurisdiction to be satisfied by the entitlement to bring the case before another court[22].

104. The service of the expédition of the 8 March Judgment on Mr Kamdem enabled him to "exercise his appeal rights" and there was no need to serve him with the grosse, as it was not in the context of an "exécution forcée" and the decision did not order Mr Kamdem to take any action. The service of the expédition on Mr Hiob "inform[ed] him of the mission entrusted to him." Judicial decisions have coercive force in all legal systems, whether civil law or common law. In relation to the 21 January Court of Appeal Decision it was not necessary to serve an expédition or grosse upon Mr Kamdem because the Court of Appeal judgment is "exécutoire" (enforceable) as soon as it is made. The binding force of a court ruling comes from the fact that it is rendered by a legitimate authority, which in a democracy constitutes the third power of the state alongside the executive and legislative powers. The citizen is therefore compelled to comply with this ruling notwithstanding his own will. He must comply with this decision spontaneously and will be compelled to do so by force, if necessary[23].

105. The parties to the Cameroon proceedings did not need to give their consent in order for the 8 March Judgment to have substantive legal effect and confer a legitimate mandate upon Mr Hiob, nor did Mr Hiob need anyone's consent. In his report, Dr Assira distinguished between different meanings of the verb "to execute" ("exécuter") i.e. between "execution" by the debtor which effectively means "comply with", and, on the other hand, "execution" by the creditor, which effectively means taking action to enforce compulsorily the debtor to do what is required.

106. As to whether a grosse of the 21 January Court of Appeal Decision had to be served on Craft and Mr Kamdem in order for Mr Hiob to be appointed as provisional administrator, Dr Assira said a grosse is unnecessary because it is only required in the

[21] Day 4/63
[22] Day 5/68 to 75
[23] Report §70

case of "exécution forcée". The decision was "exécuté" (executed) in accordance with the provisions of article 211 CPCC. There was no need to serve the judgment on Mr Hiob, but it had to be served on the other parties so they could exercise their appeal rights. The expédition of the 8 March Judgment was served on Mr Kamdem so that he could exercise his appeal rights. It was served on Mr Hiob to inform him of his mission.

107. The 8 March Judgment upheld by the 21 January Court of Appeal Decision is "exécutoire" ("has substantive legal effect") without the need of being endorsed with the executory formula. The provisional administrator was duly mandated and could legitimately take control of Craft and initiate any action.

The 15 July Order

108. In relation to the 15 July Order, in oral evidence Dr Assira disagreed with Dr Titanji's view that Mr Kamdem had good grounds to apply to set it aside. In cross-examination[24] he ultimately agreed that the courts in Cameroon in practice generally apply the OHADA rules, as there are no specific Cameroon domestic laws governing the provisional administration of companies. Whilst he expressed doubts as to what precisely Article 160-2(3) required in relation to parties being called and his lengthy evidence on this issue was not at all times clear, ultimately he agreed that to be compatible with Article 160-2(3) the procedure for an extension of a provisional administrator's mandate must be one which involves the shareholders being called[25].

The "Sur Minute" endorsement on the 15 July Order

109. As regards the Sur Minute endorsement, Dr Assira's evidence was not entirely clear. His evidence that that endorsement is not found on an order made "en referé" was wrong. He said the Sur Minute endorsement advances the time at which the order become "exécutoire", but it does not follow that such wording would be superfluous if all judgments and orders were "exécutoire" when pronounced. An ordonnance is "exécutoire", even without the endorsement. An ordonnance and a "jugement" are different; it is not possible to have the Sur Minute endorsement on a "jugement". He disagreed with the suggestion that this was because "jugements" cannot be 'exécutoire' until post-registration. He maintained his evidence that all decisions are immediately "exécutoire". Here, the provisional administrator was willing to give effect to appointment and he did so. But if he had not been willing, he could not be forced to do so and thus there is no purpose or need for an executory formula, because a provisional administrator order cannot be enforced against him. He did not accept that without the Sur Minute endorsement, the 15 July Order would not be "exécutoire". Whatever the wording, the ordonnance is exécutoire. The Sur Minute endorsement is there for appeal purposes – i.e. to prevent a stay arising immediately upon an appeal.

110. Dr Assira agreed that it was not only that no means of forced execution could be employed in the period before the grosse is served, but, further, there are no adverse legal consequences for the losing party e.g. there is no equivalent of being in contempt of court. There are criminal sanctions for compliance post-service of a

[24] Day 5/66
[25] Day 5/51 and see Day 5/90

grosse, but this was for decisions that are susceptible to an exécution forcée, which he did not consider the appointment of a provisional administrator to be. In the period before a grosse, there is a "moral obligation", because this decision is handed down by a jurisdiction that is representing the justice system or the government then in a way, because this institution is recognised as such. It does impose a certain obligation on the person that is subjected to that decision.

111. Dr Assira was asked questions about an order for provisional execution of a "jugement" appointing a provisional administrator. In my judgment this did not assist, given that such an order was actually refused in the present case and there is no evidence that such an order can ever be attached to a "jugement" appointing a provisional administrator: see paragraph 200 and 201 below.

(G) The Parties' submissions

The Applicants' case

112. The Applicants contend that Mr Hiob has not acquired authority because the formalities necessary for the 8 March Judgment and the 21 January Court of Appeal Decision to vest him with authority have not been completed. Under Cameroon law, to vest Mr Hiob with authority, either or both of the decisions would need to be rendered in the form of a grosse *and* the grosse would need to be served. Whilst it appears that grosses have since been issued, the issue is to be decided on the assumption that there are no such grosses.

113. In order to be capable of "substantive legal effect", court decisions in Cameroon need to be rendered and served with the executory formula attached or with other wording which amounts to the court ordering that its decision shall have substantive legal effect. By "substantive legal effect" the Applicants mean "exercising the coercive power of the state so as to impose substantive obligations or other adverse legal consequences on a party".

The legal effect of Cameroon judgments

114. The difference between English and Cameroon law in relation to the legal effect of judgments is clearly shown by the evidence of both experts as to the effect of a "jugement" which orders somebody to do something (for example to pay money) in the period prior to either an appeal being filed or a grosse being served. The effect of the evidence of both experts was that such a "jugement" does not impose *a legal* obligation to do the thing ordered. There is no legal constraint or legal imposition on the judgment debtor. There is just the knowledge that if he does not do something - namely either comply or appeal - he is likely to be legally imposed upon in the future, when a grosse is served.

115. The underlying jurisprudential reason for the difference in Cameroon is the idea of the double degree of jurisdiction, namely that everyone has the right to have their case tried twice, with the appeal being a complete rehearing, before they are subject to adverse legal consequences. Dr Assira accepted that it was part of the idea of the

double degree of jurisdiction that a person has a right not to suffer adverse consequences before getting to the second-tier court[26].

116. The expédition has the procedural effect of starting the time for appeal running. It also precludes the same question being determined again at the same level of court. It indicates what relief the Court considers the applicant is entitled to, but does not yet grant the relief in the sense of changing the parties' substantive legal rights or obligations. The parties' substantive legal rights or obligations will be changed so as to accord with the judgment, if and when a grosse is served.

117. The system of requiring a grosse before legal obligations are imposed achieves the aim of avoiding legal obligations being imposed before the time for appealing has expired or (if there is an appeal) before the appeal has been determined.

118. Section 11 is not limited to judgments which are "capable of enforcement" ("*susceptible d'exécution forcée*"). Dr Assira, in re-examination[27] did not support the view that they are so limited (although he considered that a judgment appointing a provisional administrator is "not capable of enforcement").

119. The Applicants submit that it appeared to be common ground between the experts that a similar effect as is achieved by the addition of the executory formula is achieved by the use of other special wording in a court order; for example, in the case of an ordonnance, the use of the Sur Minute endorsement meaning that the decision is "exécutoire" without the need for an expédition. The word "exécutoire" in the context of the executory formula and in the Sur Minute endorsement means "having substantive legal effect". A decision which is "exécutoire" will *also* be enforceable (by seizure of goods, attachment of money etc).

120. However the experts disagree about the effect of a judgment (such as those in issue) which is not directly ordering somebody to do something, but which (if it had substantive legal effect) would coercively and adversely affect that party's legal rights. Dr Titanji says that the position is essentially the same as in the case of a judgment ordering somebody to do something: the party's substantive legal rights/obligations are not adversely affected until a grosse is served. The Respondents' case is that the judgment, immediately on pronouncement, coercively and adversely affects the party's legal rights. The Applicants submit that Dr Titanji's evidence is to be preferred.

121. The Respondents' case does not fit with two observed features of events in this case:

(1) The two extension orders each bear the Sur Minute endorsement. These are words which make the orders "exécutoire" in the same way as the executory formula does in the case of a grosse. On the Respondents' case, this endorsement would have no purpose and would be inappropriate, since (on their case) they relate to enforcement (exécution forcée) which they say is impossible for an order of this type.

(2) The existence of the grosses of the 8 March Judgment and the Court of Appeal Decision has no direct effect on the present proceedings. However it is

[26] Day 4/50
[27] Day 5/83

> inconsistent with the Respondents' case, as is their use by Mr Valère to procure a change in the register. If the Respondents were right there would never be any grosses of judgments appointing Mr Hiob. Such documents would serve no purpose whatsoever and would be inappropriate, since grosses are only concerned with enforcement (exécution forcée) and an order appointing an administrator cannot be subject to exécution forcée. However, grosses of both appointment decisions have in fact been issued, presumably at the instigation of Mr Valère. Moreover, it is obvious that these grosses were required for the purposes of Mr Valère's quest to get Mr Hiob's details entered on the register. In his submissions of 27 January 2023, the Chief Registrar stated in terms that the Court of Appeal grosse which he attached had "contributed to the registration of" Mr Hiob.

122. The Respondents' case leads to strange results: an administrator who is appointed by a "jugement" immediately obtains authority to act for the company. But as soon as there is an appeal, he ceases to have authority.

The extension orders

123. As regards the extension orders (the 15 July Order and the 18 April Order), whilst the Court is entitled to look at them, they are of insignificant evidential value compared to the testimony of the experts.

124. As regards the evidence before the Court of other instances of the appointment of a provisional administrator where there was or was not a grosse, Mr Hiob's evidence that he could not recall being appointed by a document with the executory formula on it was weak.

The Respondents' case

125. The Respondents submit that court decisions in Cameroon are capable of substantive legal effect when they are pronounced, without any particular wording being required. The executory formula is relevant only to enforcement (seizing goods, attaching bank accounts). It is not relevant to the effect of the Court's order in creating or imposing adverse legal consequences.

126. The burden of proving the case is on the Applicant. Where a party seeks to show that extensive legal proceedings in a foreign jurisdiction are flawed from the outset the evidential burden to provide sufficient evidence to establish the burden of proof is a heavy one. The Court is being invited to make a very serious criticism of the lawyers and, more importantly, the judiciary of a foreign country and a jurisdiction based on the wholly distinct civil justice system.

127. If there was any merit in the Applicants' argument, this argument should have been taken before the courts of Cameroon and not in England. This point is now being taken at least to some extent in the Cameroon (in relation to the appeal against the 15 July Order) and that is where the argument is best conducted. The Applicants must persuade this Court that the courts in Cameroon have been unaware of the fundamental flaw in the proceedings that they have permitted, and continue to permit, to be conducted in their courts.

128. Dr Titanji's argument in his first report is incoherent. Dr Titanji says that, in the Cameroonian system, judgments impose no legal obligation on being pronounced and that only when they carry the executory formula do they have "substantive legal effect", whatever that means. At the same time he describes how an order can be voluntarily executed once a party has been served with an expédition.

129. What Dr Titanji could not explain was what it was that was being stayed when a party who had appealed an order after service of an expédition, if there was no legal obligation from the outset and no legal obligation even on service of the expédition.

130. Whether that judgment can be enforced by bailiffs or otherwise on a party unwilling to comply with its obligation under the judgment is a secondary question and it is clear that in Cameroon, as in England, a warrant of execution is required (i.e. the 'grosse'). The warrant or 'grosse' takes its authority from the judgment. If the grosse allows enforcement, the question then arises enforcement of what? The answer must be enforcement of the judgment or order. The logic is that the judgment or order is effective at creating an obligation. However, to enforce that obligation e.g. by the use of bailiffs, the judgment or order requires the endorsement of the judgment or order by the "formule exécutoire" (i.e. writ of execution).

131. The Applicants' case as to who is required to be served with a grosse of the 8 March Judgment and the 21 January Court of Appeal Decision is inconsistent.

132. Dr Titanji conceded that an order can be complied with voluntarily after service on a party of the expédition. The logic of this must be that the order creates an obligation that has been voluntarily complied with. If there were no obligation there could be no compliance, voluntary or otherwise. If it were otherwise, on Dr Titanji's logic a party who had voluntarily agreed to abide by the order or judgment would be able to change its mind at a later date and stop complying without having breached any order because on Dr Titanji's argument there was no effective order in place.

133. Testing Dr Titanji's argument against the practice and procedure employed in Cameroon, it is apparent that Mr Kamdem, whilst he has appealed (unsuccessfully) the 8 March Judgment and is now making a further appeal, has clearly accepted that there is a judgment which will bind him, if it is not overturned and he has repeatedly sought the order appointing Mr Hiob to be stayed.

134. Mr Kamdem, his lawyers and the judges of the various courts involved have not identified Dr Titanji's argument. Dr Titanji's opinion is an outlier and is in contradiction of the experience of Mr Hiob, who in his various appointments from the court has never seen a grosse, and of the experience of Dr Assira. If and in so far as Mr Kamdem has now raised this issue of a grosse, in the Cameroon courts, it will be better for those courts to adjudicate on this point.

135. As regards the 18 April Order, the requête provided the court with the relevant history of the present application and drew the Cameroon court's attention to the issue of the grosse, front and centre. The inference must be that the High Court of Wouri is unlikely to have failed to notice, if Dr Titanji's opinion were correct.

136. Dr Assira used the word "execute" in both contexts. Execute ("exécuter"), for the losing party, means to comply voluntarily with the judgment and, for the winning

party, it means to take the appropriate steps to enforce, using bailiffs if the losing party does not comply voluntarily. In the present context, "enforcement" means enforcement through bailiffs etc i.e. "exécution forcée" and "exécutoire" means "if not complied with voluntarily, to be enforced"

137. As regards foreign law, when considering what, as a matter of fact, the law of Cameroon is, the Court is entitled to take account of, not only the expert opinion of the two witnesses, but also of the decisions of the courts in Cameroon, and in particular the decisions of those courts taken in the present case (e.g. the decisions extending the mandate). In fact the decisions of the courts in Cameroon cannot be impugned by this court on the basis of what any expert in Cameroonian law might say. This Court has to apply Cameroon law in general, and Section 11 in particular, as they are understood and applied by the Cameroon courts. Otherwise, it is not Cameroon law that this Court is applying.

Section 11 of Law 2006/0015

138. As regards Section 11, the evidence shows that the words "capable of enforcement" (and French equivalent) qualify all of the types of document there referred to. In any event, only those judgments which are capable of enforcement must bear the executory formula. The contrary position would be the 'Kafkaesque' position that in order for the 8 March Judgment to have had legal effect Craft and Mr Kamdem would have had to be threatened that unless they carried out the appointment of Mr Hiob (and presumably all the subsidiary requirements of reporting etc) they would be forced to do so by the forces of law and order.

139. The words "capable of enforcement" mean that there is something that can be made to happen - an event to occur or a person to perform an act - something imposing a burden on a party. Dr Titanji used the example of a father being ordered to give up custody of a child to its mother. The Respondents' case is that not every judgment is capable of enforcement. There are judgments where the concept of enforcement is irrelevant e.g. a declaration and the appointment of an officer of the court. If it were otherwise, the law would require a formality to be carried out with no purpose, save that a failure to perform correctly, (for example if the executory formula did not have the correct form of words), would make it null and void. All such orders would have to await the bailiff notifying the party or parties who can do nothing to comply with the order, and that, unless they comply, the forces of law and order will take enforcement action against them.

140. In the instant case the language of the 8 March Judgment itself precludes any further enforcement. The High Court of Wouri making the judgment has already chosen from its list the provisional administrator and the appointment was made on the day of the judgment. The provisional administrator had to publish in the press his appointment within 15 days. The judgment would be in limbo if it had to await the notification of the executory formula and, by the time it had been served, the provisional administrator would already be in breach of the requirements of the court i.e. he would not have placed the notice in the press.

141. It is only when one party wishes to enforce a judgment that the judgment bearing the executory formula must be served. The English equivalent (in almost identical terms) is the "writ of execution".

142. As regards the principle of "double degree of jurisdiction", it means merely there is an automatic right of appeal on the basis of a "full rehearing" and not that all (or some) first instance judgments in Cameroon have no legal effect at all until either the parties voluntarily comply or the time for lodging an appeal has run out or after an appeal As Dr Assira expressed it, a judgment is effective until it has been overturned; and pending an appeal a party may act on the strength of the judgment but the risk is that it can be overturned on appeal.

143. The appointment of the provisional administrator meant that from the moment he took up the appointment, he had acquired the rights and obligations of the manager of the company and the obligation/duty he owed was to the court. The rights of the shareholders would be affected because they had had their ability to appoint or remove the company manager taken over by the court. The shareholders do not have any obligations to the company and therefore their obligations were not affected.

144. The fact that the judgment conferred the status of manager on a court appointed provisional administrator is relevant in that it underscores the unilateral nature of the effect of the judgment i.e. it was made between the court and the provisional administrator

145. A judgment appointing a provisional administrator cannot be subject to "exécution forcée".

146. The Respondents do not rely on the fact that there are *now* "grosses" of the 8 March Judgment and of the 21 January Court of Appeal Decision. Mr Coulter suggested that they may have been obtained as "belt and braces".

The extensions of Mr Hiob's mandate

147. The Respondents rely on the fact that the High Court of Wouri has twice extended the mandate of Mr Hiob in the 15 July Order and in the 18 April Order, as evidence of the validity of his original appointment by the 8 March Judgment.

148. Making the applications ex parte was the correct Cameroonian procedure. Support for Dr Assira's evidence to this effect is the fact that the court made the order. The parties to the application were Mr Hiob and the Court. Mr Hiob was not a party to the proceedings between Mr Valère and Mr Kamdem. Dr Assira had said that Mr Kamdem can make his own 'requête' to set aside the extension. He does not seem to have taken this opportunity but has appealed instead. It is apparent from the number of requêtes employed by the parties in Cameroon that this is the accepted procedure. If the applications should have been on notice it can be inferred that any court would satisfy itself that notice had been given. The fact is that the court made the extensions and the court will control its own proceedings.

149. As regards the 18 April Order the Cameroon court (the President of the High Court in Wouri) was made fully aware of the English proceedings and the arguments raised and was clearly unimpressed. The mandate of the provisional administrator has been extended and at the same time it was confirmed that Mr Hiob has been duly mandated since 21 January 2022 to act on behalf of Craft.

150. The absence of a grosse on the 8 March Judgment was not relevant nor was it raised in Mr Kamdem's appeals against the 15 July Order and against the 18 April Order. The absence of a grosse has not featured in any of the applications or court documents relied on by Mr Kamdem in the Cameroon courts until his submissions made on 31 January 2023 in relation of Mr Hiob's deregistration from the RCCM.

151. The Respondents say that events surrounding the RCCM are essentially "noises off" or a "guerrilla action" by Mr Kamdem to undermine the appointment of the provisional administrator.

152. In conclusion, the Respondents submit that this Court is in effect being asked to hear an appeal against the decisions in Cameroon at first instance and after a rehearing in the Cameroon Court of Appeal. First, this Court is not equipped or entitled to act as such an appeal court. It should give proper respect to the decisions of the Cameroonian court and when doing so, should note that in particular the point being taken in England to impugn the decision in Cameroon has not been taken by Mr Kamdem in the Cameroon courts and has not been raised by any of the many and various judges in front of whom these proceedings have come for a decision. The Court is invited to infer that the Cameroonian courts know, and have applied, their own law and procedure. If the contrary is that the Cameroonian courts have misunderstood their own law and procedure, they have nevertheless decided what their law and procedure is and it is that law and procedure that is apparent from the many and various judgments.

153. If the application before this Court succeeds, it will create an impasse in that in Cameroon the courts do not require the executory formula to be served in order to appoint a provisional administrator but that the English court will say that the Cameroonian courts do not know their own law and procedure and until the executory formula is served the whole proceedings in Cameroon are so much waste of court time and litigants' money.

(H) Discussion and analysis

154. The question for this Court is to determine, as a fact, what the position is as a matter of Cameroon law. That involves reaching conclusions based on the evidence of the expert witnesses, including their evidence as to the proper construction of relevant Cameroon legislation and cases, and the meaning of documents. In addition, I am entitled and required to consider the evidence as to what the courts in Cameroon have done and will or might do in the future.

155. The evidence does not directly point one way or the other. There has been no clear explanation of the effect of a "jugement" for the appointment of a provisional administrator. (In the evidence that there are contrary indicators). Moreover, there is very little direct evidence of the actual practice in Cameroon in relation to the appointment of a provisional administrator. Moreover, as I have indicated in paragraphs 68 to 70 above, in my judgment, there are certain weaknesses in the evidence of both experts.

156. Overall the strongest pointers in favour of Applicants' case are:

(1) The fact that, subsequently, the Cameroon courts have issued grosses of the 18 March Judgment and the 21 January Court of Appeal Decision and that these have been taken into account and relied upon by the Chief Registrar as justifying the entry on the RCCM of Mr Hiob as provisional administrator.

(2) The Sur Minute endorsement on the 15 July Order and on the 18 April Order.

157. On the other hand, the strongest pointers in favour of Respondents' case are the refusal of the application for provisional execution in the 8 March Judgment; the two extensions of the mandate by the 15 July Order and the 18 April Order, which are clear evidence of a pre-existing authority; the Supreme Court decision of 27 February 2023 refusing the stay of the 21 January Court of Appeal Decision; and the difficulty in applying the wording of the executory formula to, and the practical improbability of bailiffs carrying out an "exécution forcée" of, an order for appointment of a provisional administrator.

158. In the following paragraphs I examine the following issues:

(1) The meaning of terms and concepts in French and English;
(2) Section 11 itself and its construction;
(3) Whether a judgment for the appointment of a provisional administrator can appropriately be subject to the executory formula/ a grosse;
(4) Voluntary execution;
(5) The terms of the 8 March Judgment itself;
(6) The Supreme Court's refusal of a stay dated 27 February 2023;
(7) The two extensions of the mandate – the 15 July Order and the 18 April Order;
(8) The significance of the Sur Minute endorsement;
(9) The existence now of grosses of the 8 March Judgment and the 21 January Court of Appeal Judgment.

Further common ground

159. Before doing so, I set out the following further common ground:

(1) An expédition must be served. It is served by a court bailiff. The service of an expédition starts the three-month time limit for an appeal running.
(2) In the normal case of a judgment for money, a grosse cannot be obtained within the time period for appealing.
(3) If an appeal against a "jugement" is filed, then execution is stayed and a grosse cannot be obtained unless and until that appeal is dismissed: see section 2(1) Law No. 92/008.
(4) If no appeal is filed within the time limit for appealing, then the party in whose favour the judgment is given, can proceed to obtain a grosse upon proof of service of the expédition and a certificate of non-appeal.
(5) A grosse must be served by a bailiff (rather than a party to the litigation).
(6) The wording of the executory formula is, in terms, a direction and command addressed to the bailiffs and process-servers - and, if need be, other forces - to enforce the judgment.

(7) A further appeal to the Supreme Court from the Court of Appeal does not automatically prevent execution. The successful party can still obtain a grosse of the lower court's decision and arrange for service of the grosse**.** The party appealing to the Supreme Court may apply to that court for a stay and service of a certificate of such an application will then automatically suspend execution of the Court of Appeal judgment until the Supreme Court decides the application for a stay. Sections 5(1) and 5(5) Law No. 92/008.

(8) There can be provisional execution of a judgment ("exécution provisoire"). This is provided for in Section 3 (new) of Law No 92/008 and Article 32 UASRPEM. Such a judgment carries the express stipulation that it can be executed provisionally irrespective of any appeal ("*Ordonne l'execution provisoire nonobstant appeal*"). In that event if the defendant does not wish to comply, he must appeal *and apply* for a stay of execution. That application will be heard as a matter of urgency. Statute lays down the types of case which can be made subject to provisional execution: section 3(new)(1)(a) to (c). The appointment of a provisional administrator does not fall within those categories. It seems that an order for provisional execution has the same effect as a grosse. Dr Titanji's evidence is that it is actually delivered in the form of a grosse directly; on the other had Article 33 UASRPEM suggests that no actual executory formula is required, but that it has the same effect as a grosse.

(9) By contrast where an "*ordonnance"* is made subject to the Sur Minute endorsement, it does not carry the executory formula.

(1) The meaning of terms – "exécutoire" "exécution" "exécution forcée" – two concepts - substantive legal effect and enforcement vs forced execution

160. At the heart of the issue in this case is the meaning to be ascribed to a number of words and terms, in particular the following:

(1) The French word "exécutoire" (and "exécution") and the English words "execute/execution" and "enforce"/"enforcement" – as those words appear both in formal Cameroon documents and as they have been used in evidence by the expert and other witnesses. "Exécutoire" also appears in "formule exécutoire" and "titre exécutoire".

(2) The terms "substantive legal effect" and "coercive effect", as those terms have been used in expert evidence and in the parties' arguments.

161. Divining the meaning of the French terms used has not been an easy task, and one made more difficult by translations from French into English which have not at all times been consistent. This requires not only translating language but also seeking to "translate" legal concepts. I make two observations which I consider to be important.

162. First, in English, the word "execute" (particularly when used in the context of a decision or judgment) has two distinct meanings: (1) give effect to (by the party to whom the decision is addressed) and (2) enforce (by the party in whose favour the decision has been given). Of the experts, only Dr Assira made this point, and clearly, in this first report. It is a point well made. As appears from Dr Assira's report[28]

[28] At §78

(written in French) this distinction also falls to be made when considering the relevant French words, where Dr Assira refers to the first meaning as "exécution volontaire" and the second as "exécution forcée".

163. Secondly, there is a distinction to be drawn - certainly as a matter of English law - between an obligation and the enforcement of an obligation. The Applicants have repeatedly referred to the terms "substantive legal effect" and "coercive effect". This has not been of great assistance. However I take these terms to mean, respectively, (1) effect upon the nature of a legal relationship i.e. changing the nature (2) the power of the state to enforce the change in the nature of the legal relationship; ("exercising the coercive power of the state so as to impose substantive or other adverse legal consequences on a party").

164. The Applicants' case is that these two terms are synonymous and have the latter meaning i.e. according the power of the state to enforce the change in the nature of the legal relationship; and that there is, in Cameroon, no separate (and prior) concept of changing the nature of the relationship. In any event, neither "term" applies until there is a grosse. In closing Mr Holroyd seemed to argue that "coercive" means no more than substantive legal effect, and, when using that term, he distanced himself from any element of force or enforcement.

165. The Respondents suggest that the two terms reflect separate and distinct concepts; and that the executory formula provided for in Section 11 is concerned only with the second concept, namely "forceful enforcement". Substantive legal effect happens at a stage prior to enforcement.

166. As regards the French word "exécutoire", the Applicants submit, in closing, that it means "substantive legal effect" and thus, for that reason, "capable of enforcement" (and that Dr Assira agreed that it means "capable of imposing an obligation"). The Respondents submit that "exécutoire" means "capable of enforcement" and, in this context, "capable of "exécution forcée".

167. As regards "exécution forcée", the Applicants say "exécution forcée" means, or includes, the mere act of obtaining a grosse. Dr Titanji considered that it means simply non-voluntary execution. In English it is typically referred to simply as "execution". In his view "exécution forcée" means "conferring substantive legal effect" (as referred to above). He stated, erroneously, that in the English version of Section 11, "execution" is used as the equivalent to French wording "exécution forcée". Dr Titanji did not accept that there is a third category of execution which is neither voluntary execution nor "execution"/"exécution forcée". There is a tension here: Dr Titanji said that "exécution forcée" means "substantive legal effect"; Mr Holroyd in closing submitted that "exécution" alone means "substantive legal effect". If that is right, then Mr Holroyd gives no meaning to the word "forcée" and does not distinguish "exécution forcée" from "exécution".

168. In my judgment, I prefer Dr Assira's evidence on these issues for the following reasons:

(1) As a matter of Cameroon law (as well as English law) there are two distinct concepts: binding legal obligation and enforcement of that obligation. Substantive legal effect and enforceable through coercive powers are distinct.

(2) The word "execute" in English (and in French) has two different meanings, depending on the context – "giving effect to" and "enforcing".

(3) The Applicants have been unable to distinguish between French concepts of "exécution" and "exécution forcée", and give no distinct meaning to the word "forcée". "Exécution forcée" means enforcement by bailiffs and others, (and against assets: see paragraph 182 below).

(4) "Exécutoire" means enforceable/capable of enforcement and not merely "substantive legal effect" in the sense of creating a legal obligation.

(2) Section 11 of Law No 2006/0015

169. Section 11 is set out in its French and English texts in paragraphs 75 and 76 above. The precise words of the executory formula are contained within Section 11 itself. A number of issues arise on Section 11.

170. First, whilst the two language versions are of equal status, as a matter of Cameroon law, I accept Dr Assira's evidence that in the Francophone part of Cameroon, the courts will apply the French language version.

171. Secondly, the English version is not a "word for word" translation of the French version. The French version refers to "les expéditions des arrêts, jugements, mandats de justice", whilst the English version equivalent of these words is "copies of judgments and judicial warrants". The English "judgments" thus covers both "arrêts and "jugements". Secondly, in the English version there is a comma after the word "warrants"; in the French version there is no comma after the equivalent "mandats de justice". I note too that the English equivalent of the French "exécution forcée" is "enforcement" (and not "execution" as stated by Dr Titanji in his first report[29]). Moreover there is a further inconsistency in the wording of the executory formula itself where "jugement" in the French version is given a distinct separate English equivalent of "order", and the English "judgment" covers "arrêt" only.

172. Thirdly, as regards the words of the executory formula itself, this takes the form of a command and order made by the state (the President of Cameroon) addressed, in the first place, to court bailiffs and process servers (French "agents d'exécution") to "enforce" (French "mettre à exécution") the judgment. The command is then addressed, secondly, to the Procureurs General and the State Counsel to lend support to the primary enforcers, and, thirdly, to the armed forces and police forces to lend assistance when required by the law. In other words, the executory formula is concerned wholly and only with methods of enforcement and execution by bailiffs (with the assistance of others). This concept is reflected in the words "exécution forcée" in the first part of Section 11. It is also reflected in the terms of Articles 28 and 29 and 31 and 32 UASRPEM. Articles 31 and 32 in English refer to "compulsory execution" which is directed towards property. Article 33 in English describes a "decision bearing the executory formula" as a "writ of execution" (in the French text, a "titre exécutoire"). Moreover, in the French version of Articles 31 and 32 "compulsory execution" is "exécution forcée". In my judgment, the word "enforce" (i.e. "exécution" in French) within the executory formula itself is the "enforcement" (i.e. exécution forcée) referred to in the first part of Section 11 - to which I now turn.

[29] At §64 a)

173. Fourthly, and importantly, is the question whether Section 11 applies to (1) all "judgments" (i.e. "jugements, arrêts and mandats de justice") or (2) only those "judgments" which are "capable of enforcement" ("susceptible d'exécution forcée"), such that a judgment which is *not* capable of enforcement does not require, nor bear, the executory formula. The Applicants contend for the former; the Respondents for the latter. It is important to note that the French version is "susceptible d'exécution forcée" – forced execution, and not simply "exécution". As a matter of the language and structure of Section 11, I prefer Dr Titanji's view[30] that the words "capable of enforcement" in Section 11, as a matter of grammatical sense, apply only to the prior words "all documents" (or possibly the entire phrase from "together with" to "all documents"); they do not also apply to the words "Copies of judgments and judicial warrants". I note that this is supported, in the English version, by the placing of the comma after the word "warrants". This lends some support to the Applicants' case that every "arrêt" and "jugement" including the present 21 January Court of Appeal Decision and the 8 March Judgment must bear the executory formula (regardless of whether it is "capable of enforcement").

174. However, even if the words "capable of enforcement" do not, as a matter of language, qualify "judgments", there are powerful reasons to conclude that it is nevertheless implicit in the "enforceability" qualification of the *other* types of document, that, equally, Section 11 applies only "judgments and judicial warrants" which are "capable of enforcement". This conclusion is supported by the words and purpose of the executory formula itself, as discussed in paragraph 172 above. If a judgment is not "capable of enforcement" (i.e. exécution forcée/forced execution), the wording of the executory formula is meaningless and no purpose is served by its endorsement on the judgment in question. In oral closing[31], Mr Holroyd recognised that if, as he submits, Section 11 applies to a judgment which is not "capable of enforcement", then to suggest that the purpose of the executory formula is merely to give the judgment "substantive legal force" is "pretty odd", in view of the "command" language of the executory formula; the formula does not say "this judgment now has legal force".

175. I conclude therefore that the executory formula is required to be endorsed only on judgments which are capable of enforcement – in the sense of "exécution forcée"/forced execution.

(3) Can a judgment (jugement or arrêt) appointing a provisional administrator be appropriately made subject to the executory formula (and thus incorporated in a grosse)?

176. The question then arises as to whether an order (or judgment) appointing a provisional administrator is "capable of enforcement" through the offices of a court bailiff, in the same way as, say, a judgment for payment of a sum of money.

177. A judgment directly ordering a party to do or to refrain from doing something - such as pay a sum of money or transfer property, give custody of a child - imposes obligations on the person to whom it is addressed, and as such is capable of enforcement by the court bailiff, through processes of seizure of goods or attachment of moneys or bank accounts: see Article 28 UASRPEM.

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[30] Supplemental Report §§20 and 21
[31] Day 6/88

178. However an order of a court appointing a person as a court officer, such as a provisional administrator, is an order which of itself confers status upon that person (and gives that person certain powers and rights). It is common ground that the provisional administrator is not bound, as a result of the order, to accept the appointment. If he or she does not do so, then the court will appoint another person to carry out the role. The judgment does not impose, even conditionally or provisionally, an obligation upon the appointed person. In cross-examination Dr Titanji agreed that "no one was obliged or put under any obligation by this order"[32]. In these circumstances, it is difficult to conceive of a bailiff "enforcing" the judgment (in the sense of the term as used in the executory formula) *as against the appointed person* – let alone envisaging the armed forces or police forces being involved in such enforcement. The wording of the executory formula does not readily apply to the appointment of a provisional administrator or indeed to any judgment conferring optional status on a person.

179. The appointment of a provisional administrator does potentially impose obligations and/or affect the legal rights of others, and most particularly those managing the company - the directors - and possibly the shareholders; for example, an obligation to provide documents to the provisional administrator, although that obligation does not arise directly from the "jugement" appointing the provisional administrator. However if the company or directors refused to hand over documents, the likely next step would be a direct order from the court[33], rather than a court bailiff going directly to the company to enforce ("execute forcefully") the original "jugement" appointing the provisional administrator.

Service of a grosse

180. It is common ground that a grosse must be served by the bailiff. That there is a fundamental difference between a judgment ordering one party to litigation to do something (in favour of the other party to litigation) and, on the other hand, a judgment conferring status upon a third person - not party to the litigation - is borne out by the evidence before the Court as to the person upon whom it is said a grosse of the 8 March Judgment (and/or the 21 January Court of Appeal Decision) should be served.

181. The Applicants' position on this issue has been inconsistent. In their Particulars of Defendants' case, the Applicants asserted that the grosse is to be served on the company (Craft) and on the defendant shareholder (Mr Kamdem). Dr Titanji's evidence changed in the course of the case: in his first report[34], he said (consistently with the Applicants' pleaded case) that service was to be on Craft and Mr Kamdem; in his supplemental report[35], he corrected himself: service was to be on Craft and Mr Hiob himself (the third party provisional administrator), rather than on Mr Kamdem; finally in oral evidence[36], he said that there was no need to serve Mr Kamdem and service was to be on Craft itself. In closing submissions, and despite Dr Titanji's evidence, the Applicants' case was that service of the grosse is to be effected upon

[32] Day 1/42
[33] This was accepted by Dr. Titanji Day 1/40-41
[34] §60
[35] §28
[36] Day 1/35-36. He did not address whether he remained of the view that Mr Hiob had also to be served

Craft and Mr Hiob, "alternatively on the opposing shareholder as well" [i.e. Mr Kamdem]. In my judgment, the inability of the Applicants to establish clearly the person upon whom the court bailiff would be required to serve a grosse in the present case illustrates the difficulty in applying Section 11 to a "jugement" appointing a provisional administrator. This provides strong support for the conclusion that it is not "capable of enforcement" within the meaning of Section 11. The suggestion that the bailiff should serve the order on Mr Hiob, the provisional administrator, gives rise to the conundrum that, on the Applicants' case, until service of the grosse he is not the appointed provisional administrator and is thus not acting for the company. More significantly, it is hard to see how the bailiff could take enforcement measures against Mr Hiob personally, particularly since he is under no obligation to accept the appointment in the first place.

What is involved in "exécution forcée"

182. Whilst neither expert expressly addressed this issue, it seems to me, from the terms of the executory formula itself, that the role of the bailiff in relation to a grosse is not merely to serve the document itself, but to do so for the purpose of him (with assistance if necessary) "executing" the judgment by the means of forceful execution ("exécution forcée") i.e. seizing of goods or attaching money or bank account. That is the whole purpose and tenor of the executory formula itself. It is not just a stamp which renders the judgment enforceable, but it is a command and direction to the bailiff take measures to "execute" or enforce. Dr Assira in oral evidence[37] explained that "exécution forcée" involves seizing goods or attaching money and/or freezing assets or a bank account. This was not contradicted and I accept this evidence.

183. In these circumstances, it is impossible to envisage how the "jugement" could be "executed" or enforced by the bailiff as against the provisional administrator himself or to envisage what the bailiffs and others would be being commanded to do by way the executory formula, to be stamped on a grosse. Whose assets would be seized in such a situation? In closing Mr Holroyd accepted that a judgment appointing a provisional administrator cannot be enforced (i.e. subject to exécution forcée) by the seizing of goods or sending in the police[38]. His contention that it could nevertheless be subject to "exécution forcée" in the sense of being made subject to the issuing or serving a grosse was circular since the whole purpose of the grosse is to direct enforcement by the bailiff.

184. In an important passage in his re-examination[39], Dr Assira was asked whether the 8 March Judgment comes within Section 11. Whilst his initial answer suggested that it was a type of document which could bear the executory formula, he expanded upon this, saying that the executory formula would have no meaning and would serve no purpose, because you cannot force a provisional administrator to fulfil their duties.

185. Moreover, as explained in paragraphs 193 to 198 below, it is not easy to see how there can be "voluntary execution" of the 8 March Judgment or any "jugement" appointing a provisional administrator.

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[37] Day 4/21, 4/30 and Day 5/93
[38] Day 6/92
[39] Day 5/83-84

Double degree of jurisdiction

186. It was common ground that in the Cameroon law, there is a principle of "double degree of jurisdiction".

187. The Applicants submit that this means that everyone has the right to have their case tried twice, with the appeal being a complete rehearing, before they are subject to adverse legal consequences. This is the underlying jurisprudential reason for the difference in Cameroon law and for the fact that, absent a grosse, there are no rights and obligations at all. They submit that this means that all (or some) first instance judgments in Cameroon can have no legal effect at all until either (i) parties voluntarily comply or (ii) time for lodging an appeal has run out, or after an appeal.

188. The Respondents submit that the effect of the principle is that that there is an automatic right of appeal from the first instance decision on the basis of a "full rehearing" before the Court of Appeal. Dr Assira expressly accepted that it was part of the idea of the double degree of jurisdiction that, generally, a person has a right not to suffer adverse consequences before getting to the second-tier court. It applies where a decision is susceptible to forced execution ("exécution forcée). However there are exceptions; and it does not apply to a jugement appointing a provisional administrator. Dr Assira's evidence[40] is that a judgment is effective until it has been overturned and therefore until appeal a party may act on the strength of the judgment, subject to the risk that it can be overturned on appeal. If there is an appeal, there can be no enforcement and the judgment is suspended. (The position in English law may be different: on appeal from a first instance decision, a party is usually required to apply for a stay of the legal effects of the first instance decision. Nevertheless, in principle if a stay is granted, the same issue may arise if the administrator has acted in the meantime). In any event, the fact that action by the provisional administrator upon appointment might be at risk in the event of an appeal is not, in my judgment, such as to deprive the administrator of authority at the point of appointment.

Evidence of a grosse appointing a provisional administrator

189. Finally, support for the conclusion that Section 11 does not apply to the 8 March Judgment nor the 21 January Court of Appeal Decision is provided by the paucity of evidence of other examples of judgments appointing a provisional administrator in the form of a grosse (i.e. carrying the executory formula). No such document has been produced in evidence before the Court. Nor has any example been given of a case where the appointment of a provisional administrator failed for lack of service of a grosse.

190. Mr Hiob's evidence was that he had been appointed as a provisional administrator once before, but had declined the appointment. He had been appointed a liquidator on two or three occasions. His evidence in chief was that, to the best of his recollection, the executory formula did not appear on orders or judgments appointing him. His evidence was, however, open to the criticism that, in so far as he had been appointed as a court judicial expert, there would be no executory formula on the relevant instrument in any event; and further in the French text of his witness statement he referred to appointment by "ordonnances or jugements", and in the former case, they

[40] See paragraphs 102 and 103 above

would not have borne the executory formula if they contained the Sur Minute endorsement. Dr Assira had seen some judgments appointing a provisional administrator. He had been involved in the process once in France and perhaps a couple of times in Cameroon. He said the cases are not frequent[41]. He had never seen a judgment appointing a provisional administrator with the executory formula on it.

191. Dr Titanji's oral evidence[42] was that he had direct experience of a provisional administrator being appointed when he was in-house counsel to a bank and that a grosse was served to effect that appointment. No further details were provided. However he accepted that, in view of Mr Hiob's earlier witness statement to the opposite effect, he ought to have referred to this when writing his first report, but maintained that his instructions were confined to giving his "opinion" on the present case. In my judgment, his evidence on this issue was not particularly strong.

192. I address in paragraph 204 below the suggestion that the reason why no other example has been provided is because usually such an appointment is made by a different procedure – i.e. by way of an ordonnance with the Sur Minute endorsement – a much faster procedure.

(4) Voluntary execution

193. It is common ground that, in general, a "jugement" can be subject to "voluntary execution" by the person to whom it is addressed. This raises the question whether voluntary execution evidences substantive legal effect of the "jugement" if the person who has "voluntarily complied" then seeks to resile.

194. Dr Titanji's evidence on voluntary execution was inconsistent and unclear. He accepted that there are two types of execution; the first of which is "voluntary execution" where one party - the 'losing' party - "agrees to comply with the judgment". He identified voluntary execution as a type of execution and the implication of his evidence was that, where there is voluntary execution, this gives rise to "substantive legal effect". Then on the other hand, his evidence was that the party who has "voluntarily executed" can resile from having done so, with impunity. He gave the particular example of a custody dispute between parents, A and B[43]. If B hands over to A voluntarily, this is voluntary execution. But he then suggested that B would be able to take the child back from A with impunity[44]. I find this evidence difficult to accept. If A then refused to give the child back, Dr Titanji did not explain what recourse would be available to B and what action could be taken against A.

195. Secondly, initially in his report, Dr Titanji's evidence was that voluntary execution is something which takes place before (and instead of) the issue of a grosse[45]. Subsequently however in cross-examination[46] he seemed to suggest that voluntary execution could not take place before service of a grosse.

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[41] Day 5/98, and 100-101
[42] Day 1/23-25
[43] See paragraph 81 above
[44] Day 1/32
[45] 1st report §§31, 60; supplemental report §40
[46] Day 1/35 (and see supplemental report §32)

196. As regards a judgment appointing a provisional administrator, Dr Titanji said that it could be the subject of voluntary execution - initially he said by Craft or by Mr Kamdem, and then later in his evidence, by Craft only - for example, an employee of Craft handing over documents to Mr Hiob. Yet in closing, Mr Holroyd did not adopt this evidence; but rather contended that, in the absence of a grosse, such a judgment (and the 8 March Judgment itself) is *not* capable of "voluntary execution" at all.

197. Mr Coulter submitted that neither Craft nor Mr Kamdem could voluntarily execute the 8 March Judgment, as it did not require either of them to do anything. Whilst Dr Titanji suggested that Craft would have to have co-operated with the provisional administrator, it cannot be said that by doing this Craft were executing the judgment. Craft certainly had to co-operate because they had a manager to co-operate with and if they failed to co-operate they could be compelled to do so by the court, but that would not be executing the judgment. In any event the cooperation would follow after the appointment of the provisional administrator and therefore could not be a pre-condition to his acceptance of the appointment. Mr Coulter did say however that the 8 March Judgment is capable of voluntary execution by Mr Hiob – by him accepting the appointment. However he went on to repeat, correctly, that Mr Hiob could not be forced to accept the appointment. In this way, as the 8 March Judgment did not impose, even putatively, any obligation upon Mr Hiob, in my judgment his acceptance of the appointment could not be said to amount to "voluntary execution" in the sense of "giving effect to *an obligation*".

198. In my judgment, first, "exécution volontaire" is a distinct concept; and I am not satisfied that where such voluntary execution takes place that does not reflect substantive legal effect – it recognises a legal obligation. Secondly, I conclude that, in any event, a judgment appointing a provisional administrator cannot be voluntarily executed in this sense. I agree with Mr Holroyd. First, it cannot be voluntarily executed by the administrator (here Mr Hiob) since it is common ground that he is never under any obligation to accept the appointment and, secondly, it cannot be voluntary executed by the company (here, Craft) or by the opposing party to the proceedings (here, Mr Kamdem), because the appointment itself does not immediately impose any direct obligation upon them.

(5) The terms of the 8 March Judgment itself

Refusal of provisional execution

199. As set out above, Cameroon law provides for "provisional execution"; which seems to have the same effect as a grosse. Dr Titanji's evidence was that where the Court makes an order for provisional execution, it is actually delivered in the form of a grosse.

200. In the present case, as the 8 March Judgment[47] itself records and as the Court was thus quite aware, Mr Valère sought the appointment of a provisional administrator expressly as a matter of urgency; to that end he applied for provisional execution i.e. immediate enforceability, on the grounds that the subject matter of the proceedings was "of a contractual nature". However the High Court of Wouri expressly refused to grant provisional execution of the 8 March Judgment, on the grounds that the case

[47] Set out at paragraph 64 above

was not a contractual dispute, but rather about compensation for a failure or dysfunction in management. It therefore did not fall within section 3 of Law No. 92/008, which law, the High Court states, is concerned with contractual debt. It is not within one of the many categories of case set out in section 3 which are capable of being subject to provisional execution in this way: see section 3(new)(1)(a) to (c) in Annex 2. The Court concluded "that there is no need for provisional execution of this judgment" (in French "*Il n'y a pas lieu…*"). The Court went on to make a formal declaration to that effect. As accepted by Mr Holroyd in closing, the High Court of Wouri did not refuse provisional execution because it considered that, in this case, the taking up of the appointment of the provisional administrator was not urgent. He further accepted that it is not possible for a "jugement" appointing a provisional administrator to be subject to provisional execution.

201. In my judgment, two consequences flow from this. First, an order for a provisional administrator is different in kind from other judgments (which are suitable for provisional execution) such as a contractual claim. This provides support for the analysis in paragraphs 178 to 185 above. Dr Assira's oral evidence was that the Court refused provisional execution because "they cannot use this process because it would only have been applicable if we were in a creditor/debtor set up" and that the legal instrument was "not the appropriate one" and "cannot be used to obtain this decision"[48].

202. Secondly, since the High Court considered that, in the case of a "jugement" for the appointment of a provisional administrator, there was "no need" for an order for provisional execution (which has the same effect as a grosse), the High Court effectively considered that such a "jugement" did not require a grosse at all, and is immediately enforceable. This is consistent with Mr Coulter's submission that the reason why Mr Valère had applied for provisional execution was because the effect of it being granted would have meant that any appeal from the 8 March Judgment would not have given rise to an automatic stay.

203. In this way the 8 March Judgment itself makes an express distinction between a claim for contractual debt and a claim for appointment of a provisional administrator – and does so, in the context of the very issue of enforcement**.**

204. The Applicants submitted that the reason why provisional execution was refused is because, in the normal course in Cameroon, an urgent application for the appointment of a provisional administrator is made by a different procedure: namely, applying ex parte for permission to issue an urgent summons (en référé) seeking the appointment of the administrator. The application would be by way of ex parte requête. If the administrator were then appointed, it would be via an "ordonnance" and not a "jugement". Ordonnances can be made "exécutoire" immediately (by the Sur Minute endorsement), and thus the administrator would gain authority very rapidly. However there was no *evidence* before the Court that the "requête /ordonnance" procedure is the normal procedure used *in Cameroon* for the appointment of a provisional administrator as a matter of urgency. There is no suggestion by the High Court of Wouri in the 8 March Judgment that, given the known urgency, Mr Valère should have used this different procedural route of obtaining an ordonnance. When it was put to Dr Assira that this alternative procedure was the reason why he had never seen a

[48] Day 5/97 and 98; and also Day 5/79-81 and 95

"jugement" appointing a provisional administrator endorsed with executory formula, he accepted that there was such a procedure in France, but did not go so far as to accept that there was such a procedure in Cameroon[49]. He did not think that in Cameroon in almost all cases a provisional administrator gets appointed by the suggested ex parte ordonnance procedure. Mr Holroyd accepted, in closing, that this procedural route was not addressed in any detail. It is not mentioned in the reports of either expert.

205. It is notable that in his first report[50], Dr Titanji positively relied upon the fact that the 8 March Judgment did not "make provision for provisional enforcement" but did not go on to point out that an application for provisional execution had been made nor to explain the Court's reasons why provisional execution was refused and in particular its statement that such enforcement was not needed. Moreover Dr Titanji made no reference to the suggested "normal" procedural route of obtaining an ordonnance instead.

Other aspects of the 8 March Judgment

206. Two further aspects of the 8 March Judgment support the conclusion that the appointment of the provisional administrator had immediate legal effect and did not require the service of a grosse. First, the High Court states in its conclusions that the appointment was "imperative" "to ensure the *provisional* management of the affairs" of Craft. Secondly, within its reasons refusing provisional execution, the High Court nevertheless concluded that it was necessary for the Court to order publication of the decision by the provisional administrator in Gazette within 15 days of service. In cross-examination, Dr Titanji agreed[51] that that publication was to be done by Mr Hiob, the provisional administrator, that the appointment had to be publicised in the Legal Gazette and that Mr Hiob did that. In my judgment, the Court contemplated and required immediate publication. I do not accept that that publication was required to await issue and service of a grosse – which, in the case of an appeal, would take place, if at all, many months later. In closing Mr Holroyd referred to the wording of the 8 March Judgment stating that the 15 days should run from "*la signification de la présente decision*", with the implication that this meant 15 days from service of a grosse. However he did not press his contention that, whereas an expédition is "notified", only a grosse is "signified". In my judgment there was an immediate *obligation* upon Mr Hiob to publicise his appointment. In fact it appears that there was such publication on 16 April 2022.

(6) The Supreme Court's refusal of a stay of the 21 January Court of Appeal Decision

207. Further support for the Respondents' case is provided by the Supreme Court's order of 27 February 2023 refusing a stay of execution of the 21 January Court of Appeal Decision (see paragraph 45 above). Mr Kamdem had appealed against that Decision on 4 April 2022. As set out above, an appeal from the Court of Appeal to the Supreme Court does not act automatically as a stay of execution of a Court of Appeal decision. On 11 November 2022 Mr Kamdem applied for a stay of the 21 January Court of Appeal Decision. That application did have the effect of operating as a stay

[49] Day 5/101
[50] At §55
[51] Day 1/42 and 43

of execution and thus a stay of Mr Hiob's mandate (as previously extended by the 15 July Order). Mr Kamdem himself asserted in Mr Kamdem's Douala Court proceedings that the application to the Supreme Court meant that the 21 January Court of Appeal was "not yet enforceable" and/or "suspended its effects". It follows from this that once the application for a stay was dismissed, the bar on enforcement was lifted. It is further implicit that, absent such an application, the 21 January Court of Appeal Decision was enforceable and had legal effects. This analysis is reflected in the body of the 18 April Order confirming that execution of the 21 January Court of Appeal Decision was suspended between 11 November 2022 and 27 February 2023, but not thereafter.

208. Two further points arise from the terms of the Supreme Court's rejection of the application for a stay. First, the Supreme Court's reason for so doing was so that Mr Hiob "must accomplish his mission" in order to safeguard the interests of Craft (i.e in the meantime). Secondly the Supreme Court ordered its decision to be "exécutoire sur minute". In turn the RCCM continued to refer to Mr Hiob as the provisional administrator, pursuant to the 8 March Judgment i.e. it was the 8 March Judgment which conferred legal authority upon Mr Hiob. The fact that Mr Kamdem has sought a stay of the order appointing Mr Hiob supports the view that, absent a stay, Mr Hiob has existing legal authority.

209. In line with the principles in the *Yukos* case, I place significant weight on these conclusions of the highest court in Cameroon: see paragraphs 66(6) and (8) above.

(7) The two extensions: the 15 July Order and the 18 April Order

210. By the 15 July Order and the 18 April Order the President of the High Court of Wouri (the same president of the same Court which made the original appointment) extended the mandate of Mr Hiob as provisional administrator, on each occasion for a period of 6 months. The Respondents do not rely upon these extension orders as, of themselves, conferring authority upon Mr Hiob as provisional administrator. It is common ground that they have not been, and cannot be, pleaded as such. However, they do rely upon them, and the fact that they were made by the High Court of Wouri, as evidence of the fact that the 8 March Judgment (and the 21 January Court of Appeal Decision) had immediate legal effect, even absent service of a grosse and were, and are, effective to confer legal authority upon Mr Hiob.

211. The Applicants accept that indeed these two Orders do provide some such evidence, but contend that their evidential value is low. They do so on the basis that the Orders should never have been made. Mr Holroyd accepted that the two extension orders proceed on the assumption, and indeed a finding in the second one, that the administrator's mandate had begun.

212. The Applicants contend that the Orders are weak evidence, because they are unserved ex parte decisions obtained on paper in circumstances where the law required an inter partes application. Both Orders are under appeal. First the Applicants submit that Article 160-2 of the OHADA law on commercial companies applied and required a procedure to be used which summoned the shareholders. However, Mr Hiob used a without notice procedure instead. Any provisional administrator acting properly would have ensured that the shareholders had an opportunity to participate; and even more so when a shareholder would obviously wish actively to oppose the extension.

Mr Hiob deliberately excluded Mr Kamdem from the process. Further in the case of the 18 April Order, it is submitted that Mr Hiob "sought to launder" some of the issues in this case through this inappropriate procedure for tactical advantage, using a without notice procedure where the level of scrutiny is low.

213. First, there was much evidence and cross-examination concerning whether Craft is a company with a commercial "objet" and thus whether the OHADA law on commercial companies applied to it directly. However Dr Assira ultimately accepted that in any event the Cameroon Court would and should, apply that OHADA law and that the application for an extension should have been made on an inter partes basis (see paragraph 108 above).

214. Mr Hiob's evidence[52] was that he had assumed that Mr Kamdem would oppose the extension and that he had used the ex parte procedure without notifying the shareholders. However he did not accept that he had used the ex parte procedure because he did not want Mr Kamdem to oppose the application. Rather he had been acting on the advice of the lawyers.

215. However, in my judgment, even if the procedure used was wrong and even if it might be said that the Court was approving the case put forward by Mr Valère without challenge, the position remains that the High Court of Wouri, which made the 8 March Judgment, has made a reasoned decision and order extending the mandate, and which directly recognises the validity and current effectiveness of the original appointment. Those decisions stand.

216. The terms of the 15 July Order are relatively brief (see paragraph 31 above). What has been provided is merely an extract from the minutes. The preceding provisions of the order itself have not been provided. Nevertheless it records that the provisional administrator's mission "had been suspended" by the lodging of the appeal against the 8 March Judgment and that, taking account of the time necessary for the provisional administrator to execute his mission, the mandate was extended for 6 months from 1 August 2022. In this way, the 15 July Order is based on the assumption that the 8 March Judgment did confer authority on Mr Hiob.

The terms of the 18 April Order

217. The 18 April Order provides stronger evidence. The issue of the absence of a grosse of the 8 March Judgment was expressly raised in the requête and drawn to the Court's attention. The Court nevertheless proceeded to make the Order. In my judgment, I must proceed on the basis that the High Court (and the same judge, namely its President) is to be taken to have read the ordonnance and the requête and to have noticed, from the terms of the requête, the Applicants' arguments made in this Court and in particular their argument based on the absence of a grosse.

218. Secondly, in the ordonnance itself, the Court states that Mr Hiob "remains the legal representative of [Craft]" (in French, "*demeure le mandataire judiciaire représentant de [Craft]*"). "Remains" indicates a prior, existing, state of affairs. (Mr Holroyd accepted that it means "he was before"). Moreover, not only is Mr Hiob confirmed as the provisional administrator, but more than that as "the legal representative". This

[52] Day 2/5-7

confirms that he has the status of legal authority. The ordonnance also states that the 21 January Court of Appeal Decision was "immediatement exécutoire". In the translation provided in evidence this was rendered as "to be immediately complied with voluntarily, and, if not, can be enforced". However, this might be more accurately translated as "immediately enforceable" (in the same sense as "exécutoire sur minute"). Mr Holroyd in closing accepted that this was unhelpful to his case.

219. It is the case that some of these critical passages in the 18 April Order were added by Mr Valere's legal team when resubmitting the requête on 13 April 2023 (see paragraphs 50 and 52 above). Nevertheless these are the words of the order which the Court then proceeded to make.

220. As to the concern about the Orders having been made ex parte, Mr Kamdem has the ability to challenge them and indeed he has done so. He has challenged them expressly on the basis that they were made ex parte. However, he has not challenged them on the ground that the mandate which they purport to extend was itself invalid or ineffective because no grosse of the 8 March Judgment had been obtained, nor then served by a bailiff. This is so, despite the fact that the Applicants' case to that effect made before this Court is squarely referred to in the 18 April Order itself.

221. In my judgment, the two Orders provide strong evidence that the 8 March Judgment has legal effect, even absent a grosse. They are evidence of Cameroon law as in fact applied in the Cameroon courts themselves. In line with the approach in the *Yukos* case (see paragraph 66(6) and (8) above), I give weight to what the relevant foreign court has in fact done.

222. In these circumstances, this Court should be slow to reach a conclusion that one or more courts in Cameroon were ignorant of its own laws and procedure, particularly on the basis of the evidence of one expert witness who provided no Cameroon case law or evidence of direct experience of advocating in such a case to support his assertions. There would have to be much clearer and more compelling evidence for this Court effectively to interfere with an order of a foreign court.

(8) "Exécutoire sur minute" and the extensions

223. The Applicants rely on the fact that the extension orders (the 15 July Order and the 18 July Order) bore the Sur Minute endorsement. Similarly, the Douala Court's ordonnance of 22 February 2023 and the Supreme Court judgment of 27 February 2023 bore that endorsement. The Applicants contend that the Sur Minute endorsement has the same effect as a judgment with a grosse and that with this endorsement, the ordonnance can be enforced immediately and without the need to obtain and serve a grosse with the executory formula. In other words, the Sur Minute endorsement has the same effect as the executory formula. On this basis they submit that, if the Respondents' case were correct, the Sur Minute endorsement would have no purpose because the order has, in any event, substantive legal effect, and further that, in the case of the two extensions they cannot be subject to "exécution forcée". It is accepted that the Sur Minute endorsement cannot be applied to a "jugement".

224. At first sight there appears to be some force in this argument. However, first, it is not clear that the Sur Minute endorsement serves the same purpose as the executory formula on a grosse. It was common ground that on an ordonnance with the

endorsement there is no grosse or executory formula – unlike, according to Dr Titanji's evidence, the position of an order for provisional execution: see paragraph 199 above. Secondly, it can be seen that the Sur Minute endorsement can be added to a range of "ordonnances" - not just the mandate extensions, but the Supreme Court order for a stay and the Douala Court order of 22 February 2023 ordering deletion from the RCCM of Mr Hiob's appointment. On the evidence before this Court, I do not accept that such ordonnances which bear the Sur Minute endorsement are concerned with, or susceptible to, "execution forcée" by bailiffs, even though they may be served by bailiffs. On the contrary, I accept the Respondents' submission that the purpose and effect of the Sur Minute endorsement is to prevent an automatic stay if there is an appeal (i.e. there has to be a separate application for a stay if the ordonnance in question is appealed), and that it does not have the same effect as a grosse with the executory formula. In the case of the Douala Court order of 22 February 2023, on the next day Mr Valère filed an application with the Court of Appeal seeking a stay of that order.

(9) The existence now of grosses

225. Subsequently to the commencement of these proceedings, it appears that a grosse of each of the 8 March Judgment and the 21 January Court of Appeal Decision has come into existence: see paragraph 26 above. As regards the latter, in addition to the unexplained double-stamped document dated July 2022, there appears to be another grosse. As regards the former, there is a grosse dated 16 December 2022 issued by the High Court of Wouri and served on 19 December 2022. The grosse of the 21 January Court of Appeal Decision was actively employed by the Chief Registrar in Mr Kamdem's Douala Court proceedings, to support his decision to state in the RCCM that Mr Hiob is the provisional administrator. The Applicants rely on their existence as being inconsistent with the Respondents' case.

226. In my judgment, the position relating to the existence, now, of one or more grosses of the 8 March Judgment and the 21 January Court of Appeal Decision is anomalous and not easy to understand. It has not been possible to ascertain how the unexplained double-stamped document came into being. Nevertheless it does appear that one or more court officials have issued a grosse of each of the two judgments, and presumably at the request of someone – most likely, Mr Valère. That this has happened is inconsistent with the view that a judgment appointing a provisional administrator is not suitable for bearing the executory formula and not capable of forceful execution by a bailiff. There is merit in the Applicants' submission that the Respondents do not rely upon these (subsequently issued) grosses to establish Mr Hiob's authority because to do so would undermine their case that a grosse is *not* required to establish authority - and that to do so would bring into question whether they could have retrospective effect to cloak Mr Hiob with authority at the date of the commencement of these proceedings. On the other hand, Mr Valère may have obtained them as "belt and braces" and as a failsafe, particularly, in the face of the case now being made by the Applicants. Mr Coulter explained that the Respondents are not relying on these grosses in these proceedings because (a) that would require late amendment and (b) would be met with arguments about whether it could have retrospective effect. In any event obtaining the grosses is a purely administrative act by the court office; the stamp of the "grosse" may have been done without too much thought.

227. This is the strongest point in the Applicants' case and one which cannot easily be reconciled with other evidence. However there is force in Mr Coulter's submission. Moreover, in my judgment, *judicial* acts of the courts of Cameroon, including its highest court, carry greater weight as evidence of Cameroon law and practice than what appear to be administrative acts by court officials. When set against the multiple points which support the Respondents' position (as set out above), this point does not tip the balance of the analysis in the Applicants' favour.

(I) Conclusions

228. My conclusions are as follows:

(1) The burden of proof on this issue is on the Applicants. It is not sufficiently clear on the evidence that Section 11 applies to a judgment (jugement) appointing a provisional administrator. In fact, I conclude that Section 11 applies to judgments which are capable of enforcement (exécution forcée) by bailiffs and that a judgment appointing a provisional administrator is not capable of such enforcement. See paragraphs 175, 182 and 183 above.

(2) The fact that it is not possible to order provisional execution (under section 3 of Law No. 92/008) of a jugement appointing a provisional administrator provides strong support that such a jugement has substantive legal effect without the need for a grosse: see paragraphs 200 to 202 above.

(3) The 15 July Order and the 18 April Order extending Mr Hiob's mandate are very strong evidence that the appointment by the 8 March Judgment was effective to confer authority on Mr Hiob. See paragraph 221 above.

(4) The Supreme Court of Cameroon refused a stay of execution of the 21 January Court of Appeal Decision, on the grounds that Mr Hiob must accomplish his mission. This supports the conclusion that, in the absence of any such stay, the 21 January Decision had immediate legal effect: see paragraphs 207 and 208 above.

(5) Whilst the existence now of a grosse of each of the 8 March Judgment and the 21 January Court of Appeal Decision appears inconsistent with the foregoing analysis, these acts of court officials in issuing the grosses do not, on balance, outweigh the factors supporting the conclusion that the two judgments have substantive legal effect even absent a grosse: paragraph 227 above.

229. For these reasons, the 21 January Court of Appeal Decision, and the 8 March Judgment which it upholds, have substantive legal effect, even absent a grosse and thus conferred authority upon Mr Hiob to act as provisional administrator of Craft.

230. Accordingly the Applicants' application to strike out the claim is dismissed. It follows that issues relating to the authority of Dr Nasah (see paragraph 56(3) above) do not arise. I will hear the parties on the appropriate form of order and any consequential matters.

231. Finally I am most grateful to counsel for their assistance and for the detail and quality of the argument placed before the Court.

ANNEX 1

THE 8 MARCH JUDGMENT

EXTRACTS IN FRENCH
(SEE PARAGRAPH 64 OF THE JUDGMENT)

“

AU FOND

…

I-SUR LA DESIGNATION D’UN ADMINISTRATEUR PROVISOIRE

…

---Que la nomination d’un Administrateur provisoire chargé d’assurer la gestion provisoire des affaires de ladite Société s’avère impérative ;

---Qu’il y a lieu en conséquence de designer Monsieur NGOUA ELEMBE HIOB, Expert agréé près la Cour d’Appel du Littoral (Tel. n° 677.73.22.24), Administrateur provisoire de la SCI CRAFT DEVELOPMENT pour une durée de 06 mois avec pour missions de: …

…

II-SUR L’EXECUTION PROVISOIRE

---Attendu que le demandeur a sollicité l’exécution provisoire motif pris de ce que le présent litige a une nature contractuelle tirée du contrat de constitution de la société ;

---Mais attendu qu’en l’espèce, il s’agit de pallier à une défaillance ou un disfonctionnement d’un organe de direction ;

---Que cette demande n’épouse par conséquent pas les contours de l’article 3 de la loi n° 92/008 de 14 août 1992, modifiée par la loi n° 97/018 de 17 août 1997 fixant certaine dispositions relatives à l’exécution des décisions de justice ;

---Qu’en effet, ce texte de loi parle de créance contractuelle exigible ;

---Qu’il n’y a pas lieu à exécution provisoire du présent jugement ;

---Attendu qu’il y a lieu d’ordonner la publication à la diligence de l’Administrateur provisoire désigné de la présente décision dans un délai de quinze (15) jours à compter de la signification ;

…

-PAR CES MOTIFS-

…

---Désigne sieur NGOUA ELEMBE HIOB, Expert agréé près la Cour d'Appel du Littoral (Tel. n° 677.73.22.27), Administrateur provisoire de la Société Civile Immobilière CRAFT DEVELOPMENT pour une durée de six (06) mois avec pour missions de :

…

---Fixe à la somme de 2.000.000 FCFA la rémunération mensuelle de l'Administrateur provisoire à être supportée par la SCI CRAFT DEVELOPMENT,

…

---Ordonne la publication à la diligence de l'Administrateur provisoire de la présente décision dans un journal d'annonces légales dans un délai de quinze (15) jours à compter de la signification de la présente décision ;

---Dit n'y avoir lieu à exécution provisoire du présent jugement ;

…"

ANNEX 2

RELEVANT LEGISLATIVE PROVISIONS

(1) Amended Treaty on the Harmonization of Business Law in Africa 17 October 1993 and amended 17 October 2008 ("the OHADA Treaty")

Article 1 states that the object of the Treaty is "to harmonise business law in the State Parties by the elaboration and adoption of simple modern common rules adapted to their economies, by setting up appropriate judicial procedures…"

Article 5 refers to "Uniform Acts" that create the common rules referred to in Article 1.

Article 10 states that "Uniform Acts shall be directly applicable to and binding on the State Parties notwithstanding any previous or subsequent conflicting provisions of the national law."

[The OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (set out below) is one such Uniform Act.]

Article 42 affords prominence to the French version as the authentic version where there are inconsistencies between different translations.

(2) The OHADA 1998 Uniform Act on Organising Simplified Recovery Procedures and Enforcement Measures

"BOOK II
ENFORCEMENT MEASURES
PART I
GENERAL PROVISIONS

ARTICLE 28

In default of voluntary execution, any creditor may, regardless of the nature of his claim and under the conditions provided for in this Uniform Act, compel the defaulting debtor to honour
his obligations towards him or take protective measures to secure his rights.

Save in the case of a debt secured by a mortgage or other privilege, execution shall be carried out in the first place on movable property and, where this is insufficient, on immovable property.

ARTICLE 29

The State shall lend assistance in the execution of decisions and other writs of execution.

The executory formula shall entail the direct requisition of the forces of law and order.

An action can be brought against the State for failure or refusal to lend assistance.

ARTICLE 30

Compulsory execution and protective measures shall not apply to persons who enjoy immunity
from execution.

However, any debt which is certain, due and owed by state corporations or firms, regardless of
their legal form and mission, shall give rise to a set-off against debts which are also certain, due and owed them, subject to an agreement of reciprocity.

The debts of the state corporations and firms referred to in the preceding paragraph may only be considered certain, within the meaning of this article, where they arise from either an acknowledgement by the said corporations and firms of the debts or from a writ which is enforceable within the territory of the State where the corporations and firms are located.

ARTICLE 31

Compulsory execution shall be available only to a creditor who can show proof of a debt certain, due and owing, subject to the provisions relating to attachment and seizure pendente lite.

ARTICLE 32

With the exception of the auction sale of immovable property, compulsory execution may be pursued by virtue of a writ of provisional enforcement.

Execution shall then be carried out at the risk of the judgment creditor, who shall, where the writ is subsequently modified, be bound to fully make good any damage caused by the execution, irrespective of whether he was at fault or not.

ARTICLE 33

The following shall constitute writs of execution:

(1) court decisions bearing the executory formula and decisions which are immediately enforceable;

(2) foreign acts and court decisions as well as arbitral awards which have been granted exequatur in a ruling which is final in the State in which the writs are invoked;

(3) conciliation reports signed by the judge and the parties;

(4) notarial deeds bearing the executory formula;

(5) decisions recognised as court decisions by the national law of each State Party.

ARTICLE 34

Where a court decision is invoked against a third party, a certificate of non appeal and non opposition shall be produced containing the date of notification of the decision on the losing party. The certificate shall be issued by the registrar of the court that delivered the ruling concerned.

ARTICLE 35

Unless otherwise provided for in this Uniform Act, any person who relies on a document in the course of measures taken to ensure the enforcement or protection of a debt shall notify such or give a copy thereof, except where it was notified before.

…"

(3) OHADA Uniform Act relating to Commercial Companies and Economic Interest Groups

TITLE 6 - INTERIM ADMINISTRATION

Article 160-1

When the normal operation of the company has become impossible, either because of the management body, officers or the board, or because of the members, the competent court may, ruling expeditiously, decide to appoint an interim director for the purpose of temporarily managing the company business.

Article 160-2

The matter shall be brought before the competent court at the petition of either the management body, officers or the board, or of one or more members. Under penalty of inadmissibility of the request, the company shall be issued a citation.

The competent court shall appoint, as provisional director, a natural person who may be a judicial representative registered on a special list, or any other individual with experience or particular qualifications in respect of the nature of the matter, and possessing certain skills and with a good reputation.

The decision to appoint an interim officer shall:

1) state the scope of his engagement and of his powers;

2) state, where applicable, which of the management body, officers or board shall remain in office and clarify the powers and functions they shall keep;

3) set his compensation, which shall be paid by the company, as well as the duration of his assignment which may not exceed six (6) months, unless the competent court decides to extend it should the interim director petitions for it, during a hearing. In his extension request, the interim director must state, under penalty of inadmissibility, the reasons why his mission could not be completed, the measures he intends to take and the time limits required for completing his mission. The competent court shall set the term of the extension while ensuring that the total duration of the assignment does not exceed twelve (12) months." (emphasis added)

[In the French text, the words "during a hearing" are rendered by "etant appelées", which have been translated as "being called to a hearing".]

(4) Law No 92/008 of 14 August 1992, as modified by Law No 97/018 of 7 August 1997 relating to the Enforcement of Court Judgments

Law No 92/008 as amended provides, inter alia, as follows:

"**Section 1:** This law lays down certain provisions relating to the enforcement of court judgments.

Section 2 (1): In non-criminal cases, the filing of an appeal, with the exception of appeals to the Supreme Court, shall stay the execution of court judgments.

(2) Other appeals shall operate in accordance with the laws and regulations in force.

Section 3(new) (1): Notwithstanding the provisions of Section 2(1) above, the court seised of a matter may, in case of a judgment delivered after full hearing or considered to have been delivered after full hearing, order the provisional enforcement of the judgment, regardless of an appeal, in the following cases:

(a) Matters relating to maintenance claims, contractual outstanding debt, eviction based on a land certificate which confers unchallenged rights or a written lease containing a defeasance clause, the conditions of which have been met;

(b) compensation for damage resulting from acts causing bodily harm; for covering justified expenses and costs incurred to meet emergency medical treatment, in particular costs of

transportation or transfer of person concerned, costs of drugs, hospitalization and medical expenses;

(c) in cases relating to undisputed salaries.

(2) The provisions of Section 2(1) (a) and (b) above shall be applicable to civil awards ordered by a court in a criminal cases.

Section 4 (new) (1): Where the provisional execution is not as of right and has been ordered in cases not provided for in Section 3 above, the Court of Appeal shall, on the application of the appellant, order a stay of the provisional execution of the judgment under appeal.

(2) Where the provisional execution is as of right or founded on matters enumerated in Section 3 above, the Court of Appeal shall reject the application of the appellant if such application is expressly of dilatory character.

(3) The application for a provisional stay of execution shall be made to the President of the Court of Appeal. Such application shall contain the following documents:

– a copy of the judgment under appeal;
– a copy of the notice of appeal.

(4) The Registrar-in-chief of the Court of Appeal seised of the matter shall proceed forthwith to:

– register the application;
– issue a certificate of deposit of the said application;
– fix the date of the hearing and inform the appellant thereof;
– forward the file of the Procureur General for his submissions as well as a copy of the application to the President of the Court of Appeal and to the other party.

The file shall be returned to the said Court Registry within 5 (five) days of its receipt by the Procureur General.

If the Procureur General does not make his submissions within the prescribed deadline, the Court of Appeal shall proceed without them.

The hearing shall take place within 15 (fifteen) days following its registration.

(5) Under pain of declaring his application inadmissible, the appellant shall, within 5 (five) days from the date of registration of the said application, forward a copy thereof to the respondent and notify him of the date of the hearing.

(6) The respondent shall be bound to produce his submissions for the hearing, failing which, they shall be precluded.

(7) The Court of Appeal seised of the matter shall pass judgment within 30 (thirty) days of its being seised.

The judgment of the Court of Appeal may only be appealed against by order. In such case the Supreme Court shall rule within 2 (two) months of its being seised.

(8) The forwarding of the certificate of deposit to the respondent showing that the application has been filed and the appeal by order shall immediately stay the execution, even where it has started, of the judgment under appeal until the Court seised of the matter has passed judgment.

Section 5 (1): The party who loses on appeal and who has filed an appeal to the Supreme Court may, by an application addressed to the President of the said court, cause the stay of the execution of the judgment under appeal.

(2) The Registrar-in-chief shall issue such party a certificate of deposit of application. The appellant shall send a copy thereof to the respondent.

(3) The following documents shall be attached to the application:

(a) a copy of the judgment under appeal
(b) a copy of the application
(c) any document in support of the forwarding of the application to the respondent who shall have 10 (ten) days to make his observations.

(4) (a) The President of the Supreme Court shall have 15 (fifteen) days with effect from the date of registration of the application at the Court Registry to give a ruling.
(b) He shall either uphold or annul the stay of execution of the judgment.
(c) In order to guarantee the enforcement of the judgment and depending on the appellant, he may also order the appellant to deposit a sum of money, the amount of which he shall determine, or to furnish a bank security of an equal amount to the Court Registry within 30 (thirty) days with effect from the date of notification of the ruling.

(5) The enforcement of the judgment under appeal shall be stayed upon presentation of the certificate of deposit until the ruling referred to in Section 5(4) (c) above is issued and, if need be, until the expiry of the 30 (thirty) day time-limit referred to in the same Section 5 (4) (c).

(6) (a) Where the appellant does not fulfil the conditions laid down within the time-limit, the ruling shall become null and void.

(b) The Registrar-in-chief shall issue an attestation recording this deficiency in order to permit continued enforcement of this judgment.

(5) Code de Procédure Civile et Commerciale (CPCC)

Article 211 provides :

"Si le jugement est confirmé, l'exécution appartiendra au tribunal qui l'a rendu ;

Si le jugement est infirmé en totalité, l'exécution entre les mêmes parties appartiendra à la juridiction d'appel."

This has been translated as

"If the judgment is upheld, the court which delivered the judgment shall be responsible for enforcement.

If the judgment is set aside in its entirety, the court of appeal shall be responsible for enforcement between the same parties.

…"

Article 285 provides :

"Nul jugement ni acte ne pourront être mis à exécution s'ils ne portent le même intitulé que les lois et ne sont terminés par un mandement aux officiers de justice, ainsi qu'il est dit à l'article 61"

This has been translated as:

"No judgment or act may be sought to be enforced unless it bears the same title as the laws and is terminated[53] by a mandate to officers of justice as stated in Section 61."

[53] See Day 1/18