E-mail: clerks@oeclaw.co.uk

Michael Sullivan KC

Barrister
Call 1983 Silk 2008



Scope of Practice

• Arbitration • Africa region disputes • ICSID/Investment Treaty Disputes • Civil Fraud and Investigations • Energy, Mining and Natural Resources • Banking and Financial Services • Commercial Litigation • Jurisdiction and Conflict of Laws • Sanctions • Sovereign Immunity

Overview

Michael Sullivan K.C. has a particular expertise in very substantial cases involving energy and natural resources, banking, and finance, commercial fraud, and corruption. He has a substantial practice in international commercial arbitration, covering a wide variety of rules as well as investment treaty arbitrations at ICSID.

In addition to major international law firms, he provides advice directly to multinational corporations, state entities and overseas governments, often working directly with in-house lawyers in state attorney offices. He has also appeared or is presently appearing before overseas courts, including in Kenya, Tanzania, Zambia and Uganda, and many of his cases involve knowledge and understanding of foreign laws.

Mr Sullivan has strong connections in Africa and Asia having represented states, parastatal bodies and organisations in litigation and arbitration. He has also been honoured by the Republic of Kenya with the award of the Order of the Grand Warrior of Kenya (O.G.W.) for his work representing the state in major arbitration disputes, including investment treaty arbitrations.

Current and/or recent Arbitration and Court work include the following.

- Successfully acted for the People's Republic of China in defending a US$21 billion investment treaty claim:
- Acting for the People's Republic of China in a substantial investment arbitration adminstered by the Permnanent Court of Arbitraton (PCA), seated in Singapore: https//pca-cpa.org/en/cases/269, previously ICSID Case No ARB/20/34.
- Acting for Republic of Kenya in a defending an annulment application in Cortec v Kenya (ICSID Case No ARB/15/29) concerning a claim for US$ 4 billion in a disputed mining concession.

- Acting for Republic of Kenya in defending an annulment application in WalAm v Kenya (ICSID Case No ARB/15/7) in a claim for US$340 million concerning the revocation of a licence for a geothermal energy project.

- Acting for the Republic of Kenya in an investor State arbitration in a claim in excess of US$1.5 billion concerning a railway concession.

- Acting for the Republic of Zambia in ICSID Case No. ARB/20/17 concerning a copper mining dispute in a claim for US$2.5 billion.

- Acting for the Republic of Kenya in ICC Case No. 25896 concerning the construction of two dams.
- Acting for the Republic of India in *Louis Dreyfus Armateurs SAS (France) v. Republic of India*; Michael successfully represented the Republic of India in a challenge under s67 of the Arbitration Act. The arbitration claim was made in respect of a Bilateral Investment Treaty between India and France.
- Acting for a Zambian parastatal in a US$500 million arbitration in London concerning the management of a copper mine in Zambia and the investment of its monies.
- In addition, Mr Sullivan has recently successfully represented the Republic of Kenya in three substantial arbitrations concerning energy and natural resources disputes including:

- defending a claim for up to US$300 million brought by investors under a letter of support given by Government alleging that the demise of a Wind Energy project was attributable to a Political Event.

- defending a claim for US44million brought by EPC Contractors in relation to the construction of electricity sub-stations to supply electricity to the Metropolitan area of Nairobi.

- defending a claim for US$26 million brought by contractors in relation to the drilling of geothermal wells in a volcanic location in Kenya.

In addition to the Investment Treaty Arbitration claims referred to above, recent similar work includes:

- Advising an African State as to whether, and if so on what terms, it should conclude a Bilateral Investment Treaty with a Western State,
- Advising in relation to a claim made against an African State under the Economic Community of West African States (ECOWAS) Treaty.
- Advising in relation to a claim made under a Bilateral investment Treaty against a Euro Asian State.
- Advising the Republic of Zambia in a threatened claim for US$400 million concerning a copper mining dispute.

Mr Sullivan was granted rights of audience to appear in the High Court and Court of Appeal of Tanzania in order to argue the immunity of East African Development Bank under the Treaty of the East African Community and the Charter of the Bank. He is presently advising and acting in cases in the Court of Appeal of Uganda concerning the immunity of the Bank as an International Organisation. See Blueline Enterprises Ltd v. The East African Development Bank [2011] TZCA 1: the decision is of importance as to the privileges and immunities enjoyed by International Organisations under International Law. Decision affirmed by the Court of Appeal of Tanzania in Civil Application No 21 of 2012. He has recently appeared in the Supreme Court of Kenya, the Court of Appeal of Kenya and the High Court of Kenya in seeking the recognition of a foreign judgment and enforcement proceedings for East African Development Bank.

Michael's recent arbitrator work includes:

- Sitting as a party nominated arbitrator in an LCIA arbitration concerning a dispute between Chinese and Russian parties concerning the development of an oil and gas field in Kazakhstan.

- Sitting as Chairman of three related LCIA arbitrations between a US aircraft leasing company and a Russian airline concerning the financing of three passenger aircraft.

- Sitting as a party nominated arbitrator in an LCIA arbitration in a finance dispute between a European Bank and a Russian commercial entity.

- Sitting as a party nominated arbitrator in an LCIA arbitration concerning a dispute relating to a power plant in South America.

- Sitting as a party-nominated arbitrator in an investor/State dispute concerning a railway concession.

- Sitting as a party-nominated arbitrator in an investor/State dispute concerning a drilling contract

- Sitting as a party-nominated arbitrator in a contractual dispute concerning construction work at an airport in Eastern Europe.

Older cases of note include:

- Acting for Zambia in an arbitration claim made for US$160 million by a foreign based operator concerning the acquisition of the license for the Zambian National Lottery and the circumstances surrounding the privatisation of Zambia's principal lime company.

- Acting for the Attorney of General of Zambia in claims for fraud and corruption in Chancery Division, alleging theft of state funds involving operation of a secret service account in London and a fictitious arms contract and a US$100 million loan facility. The 4-month trial involved allegations of misappropriation and laundering of Government monies through bank accounts in London and other jurisdictions. See Attorney General for Zambia v Meer Care & Desai & others [2007] EWHC 952 (Ch); [2008] EWHC Civ 754; [2008] EWHC Civ 875:

- Acting for Zambia defending high profile Commercial Court proceedings in a US$55 million claim arising over Sovereign Debt acquired by commercial creditors and involving allegations of corruption. The case prompted US President Bush to direct a Congressional Committee of Inquiry into the activities of vulture funds in Third World countries. It also led to the passing of the Debt Relief (Developing Countries) Act 2010 on which Michael advised. As above, the result of this case and related litigation and arbitration is generally considered of paramount importance to African continent. See Donegal International Ltd v The Republic of Zambia & Anor [2007] EWHC 197 (Comm).

- Mr Sullivan also acted for H.E. President Museveni, President of Uganda, in a claim brought against him personally in a contractual dispute in the High Court. The matter concerned issues of Sovereign Immunity and proper service of proceedings.

- I conducted a wide-ranging Inquiry into allegations of fraud and corruption concerning an African Government-owned Bank.

- Recently acting in proceedings in the High Court of Tanzania concerning a joint venture in relation to the development of an oil field in Southern Tanzania.

- Providing an expert's opinion on English law for use in proceedings in the Moscow Arbitrazh Court.

- Acting for the Claimant, obtaining summary judgment in a dispute between Russian parties in the English High Court concerning a finance dispute.

- Acting in injunction proceedings in the Commercial Court for a subsidiary of Rosneft in proceedings which had been brought by a subsidiary of Yukos to enforce an Arbitral Award which had been set aside by the Moscow Arbitrazh Court

- For Rosneft defending 2 separate and very substantial (approximately US$640m and US$750m respectively) multi-jurisdictional arbitration claims by a French energy major arising from issues concerning the sale of the majority

interest / participation in an oil company operating Siberian oil fields, presently the largest producing oil fields in Russia. Both arbitrations involved issues of Russian law.

- For Rosneft defending claims arising out of a dispute concerning an agreement for a vessel to carry out a drilling contract in Iranian territorial waters. The arbitration involved issues of Iranian law.

- Acting for Kazakhstan company in arbitration concerning a breach of warranty claim by Russian company in relation to the sale of a Kazakh subsidiary.

- Seeking specific performance in arbitration proceedings of finance agreements to fund the construction of a shopping and entertainment complex in the centre of Moscow, Russia. The dispute involved issues of Russian law.

- Acting for a co-owner of an oil depot on the Caspian Sea in arbitration in relation to a dispute concerning resolution of corporate management conflict issues and the sale of shares in the venture and advising in relation to related company proceedings in the Cypriot Courts.

- Very substantial arbitral proceedings taking place in both Moscow and London variously over the course of 5 months and subject to Russian law in a claim brought by an American bank against a Russian bank and the Government of Moscow, involving a wide range of issues under Russian law, including allegations of misappropriation of US$150m. The arbitration gave rise to a series of hearings and appeals before the Commercial Court (described as "politically sensitive") and subsequently the Court of Appeal on the issue of privacy of a judgment in an Arbitration claim under s68 of the Arbitration Act 1996. See: Bankers Trust Company v. Department of Economic Policy and Development of the City of Moscow & Ors [2003] 1 WLR 2885; [2003] EWHC 572 (Comm) : LTL 8/4/2003 (Unreported elsewhere); LTL 25/3/2004 : [2005] QB 207; [2004] 3 WLR 533; [2004] 4 All ER 746; [2004] 2 All ER (Comm) 193; [2004] Lloyd's Rep 179; [2004] BLR 229; [2004] CILL 2093.

- Acting for the Claimant in proceedings claiming damages in respect of design, supply and construction defects arising from the installation of a Pyroflow boiler at a site in Indonesia.

- Acting for the Chinese State oil company in relation to an action concerning the sale and supply of oil to Hong Kong companies. See Sinochem International Oil (London) Co Ltd v. Fortune Oil Co Ltd [2000] 1 Lloyd's Rep 682; [2000] CLC 186

- Acting for FLS, successfully defending an application by Laker to remove FLS' nominated arbitrator (and now retired Court of Appeal Judge) under s24 Arbitration Act 1996, on the basis of a claim that there were justifiable grounds to doubt his impartiality, because he was in the same chambers as counsel instructed in the case. The outcome of the application had potentially wide implications for the bar and legal profession as a whole. See Laker Airways v FLS Aerospace Ltd & Stanley Burnton [2000] 1 WLR 133; [1999] 2 Lloyd's Rep 45; [1999] CLC 1124; [1999] CILL 1508

- Acting for Tottenham FC, in a dispute with a former player, successfully applying under s9 Arbitration Act 1996 to stay Court proceedings on the basis that the Premiership Rules made provision for disputes to be dealt with under an arbitration clause.

- Acting for FIA, in an action where the purchaser of assets from an insolvent Formula 1 racing team was not entitled to the benefit of the insolvent Prost Grand Prix SA team's entry in the Formula 1 2002 championship because the very transfer of assets by the liquidator disqualified the insolvent team by divesting it of the intellectual property rights in its cars' chassis and rendering it incapable of racing. Issues involved sport, arbitration, commercial law, company law, contracts, insolvency and intellectual property. See Phoenix Finance Ltd v. Federation Internationale de L'Automobile & Ors [2003] EWHC 77 (Comm); Times 27 June 2002

- Acting for MGN in a dispute with the former England football coach. See Venables v. Mirror Group Newspapers Ltd Times 9 December 1998

- Acting for the Bank, before the House of Lords, where in resisting a claim for possession founded on the principle in Barclays Bank plc v. O'Brien [1994] AC 180, it was for a wife to plead that the bank had constructive notice that assent

to a legal charge was induced by her husband's misrepresentation: it was not for the bank to plead and prove that it did not have such notice. See Barclays Bank Plc v. Boulter & Anr [2000] 32 HLR 120; [1999] 1 WLR 1919; [1999] 4 All ER 513; [2000] Lloyds Rep Bank 29; [1999] 2 FLR 986; [1999] 3 EGLR 88; [2000] Fam Law 25; [1999] EG 121. Also appeared before the Court of Appeal, see: [1998] 1 WLR 1; [1997] 2 All ER 1002; [1997] 2 FLR 157.

- Acting for the Bank, before the Court of Appeal, where a mortgagee who was legally entitled to go into possession as of right could do so without an order of the court. Section 36 Administration of Justice Act 1970 did not make such an entitlement unlawful. Leave to appeal to the Lords was refused. See Ropaigealach v. Barclays Bank Plc [2000] 1 WLR 1034; [1999] 3 WLR 17; [1999] 4 All ER 235; [1998] EGCS 189

- Acting for the Bank, before the Court of Appeal, where a solicitor's undertaking to use monies advanced by a bank to acquire good marketable title, meant that an acceptable title to the property described in the contract was investigated with proper skill and care. See Barclays Bank Plc v. Weeks Legg & Dean (a firm) & Ors [1998] P&CR D27; [1998] 3 WLR 656; [1998] 3 All ER 213; [1998] PNLR 729; [1998] 40 EG 182

- Acting for the Bank, as to whether the wife's charge of the matrimonial home to the bank as surety for her husband's debts was executed under the husband's misrepresentation or undue influence. Bank's constructive notice and discharge of such notice by conduct. See Turner v. Barclays Bank Plc [1998] FLR 276; [1997] 2 FCR 151

- Acting for the Bank, as to whether the interest of a charge should prevail over interest of innocent wife in circumstances where the husband was separating from his wife and leaving the matrimonial home and where the husband was in debt to the bank and the bank obtained an order for the home to be sold. See Barclays Bank Plc v. Hendricks & Anr [1996] 1 FLR 258; [1996] Fam Law 148; [1996] BPIR 17

What the Directories Say

"Michael is a market-leading KC in international arbitration. He is strategically brilliant and commercially astute. He is an extremely effective cross-examiner. He is precise, controlled and strategically very astute." (Chambers UK 2027)

"Michael is very hard-working. He is super energetic and has a very good bedside manner." (Chambers UK 2027)

"Michael Sullivan KC stands out for his unique set of experiences in commercial arbitration and investment treaty arbitration, both as counsel and arbitrator. He provides thorough, extremely thoughtful, and convincing analysis in strategic matters. He impresses others with super clear, well-articulated, and highly effective advocacy in the most complex matters." (Legal 500 2027)

"Michael stands out for his unique set of experience in commercial arbitration and investment treaty arbitration, both as counsel and arbitrator. He provides thorough, extremely thoughtful and convincing analysis in strategic matters." (The Legal 500, 2021 - 2022)

"He has an extraordinary eye for detail and is very responsive." (The Legal 500, 2021 - 2022)

"One of the best trial counsel at the Commercial Bar." (The Legal 500, 2021 - 2022)

Michael Sullivan KC is "acclaimed by sources for immersing himself so completely in a case, that he knows it back to front." (The Legal 500, 2021 - 2022)

"A fantastic trial advocate and a remarkable cross-examiner." (The Legal 500, 2021 - 2022)

"Accurate tactical judgement and political sensitivity" characterised his efforts in the high-profile Zambia case, and he continues to be an obvious choice for the major cases. (The Legal 500, 2021 - 2022)

Awards

Legal500 LEADING SILK 2027

2027 Chambers Top Ranked UK Bar

One Essex Court

ONE ESSEX COURT

Contact Clerks



Darren Burrows

Senior Clerk
+44 (0)20 7520 4611
dburrows@oeclaw.co.uk



Rob Smith

Deputy Senior Clerk
+44 (0)20 7520 4612
rsmith@oeclaw.co.uk



Jade Cassell

Deputy Team Leader
+44 (0)20 7520 4614
jcassell@oeclaw.co.uk



Ben O'Hanlon

Deputy Team Leader
+44 (0)20 7520 4604
bohanlon@oeclaw.co.uk



Jodie Ellerington

Team Leader's Assistant
+44 (0)20 7520 4620
JEllerington@oeclaw.co.uk



Calum Jenkins

Clerk
+44 (0)20 7520 4821
cjenkins@oeclaw.co.uk



Isabella Uzal

Clerk
+44 (0)20 7520 4780
iuzal@oeclaw.co.uk