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## Michael Sullivan KC

Barrister

Call 1983 Silk 2008



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## 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

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## Overview

**Michael Sullivan K.C. has a particular expertise in very substantial cases involving energy and natural resources, banking and finance, corruption, commercial fraud and asset tracing. 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 having represented 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 (O.G.W.) for his work representing the state in major arbitration disputes, including investment treaty proceedings.

Current Arbitration and Court work include the following:

- Acted for Republic of Kenya in a defending an annulment application in Cortec v Kenya (ICSID Case No ARB/15/29)
- Acting for Republic of Kenya in defending an annulment application in WalAm v Kenya (ICSID Case No

ARB/15/7

- Acting for the Republic of Zambia in ICSID Case No. ARB/20/17.
- Acting for the People's Republic of China in ICSID Case No. ARB/20/34.
- Acting for the Republic of Kenya in ICC Case No. 25896.
- *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 an arbitration in London concerning the management of a copper mine in Zambia and the investment of its monies.
- During the last two years Michael has 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.

<https://www.capitalfm.co.ke/bu...>

-defending a claim for US\$44million brought by EPC Contractors in relation to the construction of electricity substations 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. See <https://www.iarbafrica.com/en/...>

-presently advising and acting for two separate East African Banks in commercial claims in the Commercial Court in London

-presently acting and advising for East Africa Development Bank in proceedings in the High Court and Court of Appeal of Kenya.

Recent Investment Treaty Arbitration claims and/or Advisory work include:

- 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 and acting for a State in seeking to resist a claim to set aside an Award in a Bilateral Investment Treaty claim.
- For the Republic of Zambia in a threatened ICSID Arbitration claim for US\$2.5 billion brought by a copper

mining company

Michael 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

Further arbitral claims and/or court cases in which Michael has acted for the Republic of Zambia include:

-separate claims for US\$400 million and US\$30 million brought by copper mining companies in relation to alleged breaches of Development Agreements.

-for a Zambian parastatal company, seeking to pursue derivative claims against a copper mining company and its directors in relation to the management of the company in which it is a minority shareholder

-a 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 , 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. Michael led the legal team. Issues included freezing injunction relief, jurisdiction issues and concurrent criminal proceedings, asset tracing. 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:

- 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).

Michael also recently 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.

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

Michael recently acted in proceedings in the High Court of Tanzania concerning a joint venture in relation to the development of an oil field in Southern Tanzania.

Further examples of Court and/or arbitration work include:

- 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 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.
- 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.
- 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
- 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

- 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.

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

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

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.

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

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

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

For the Bank, as to whether the interest of a chargee 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

Michael's recent appointed arbitrator works 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.

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## What the Directories Say

*"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)

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## Awards



# Contact Clerks



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