

ENGLAND AND WALES / JUDGMENT

African Export-Import Bank v The National Government of the Republic of South Sudan

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IN THE HIGH COURT OF JUSTICE

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LIONEL PERSEY KC
Approved Judgment
African Export-Import Bank v The National Government of the
Republic of South Sudan & The Bank of South Sudan
Neutral Citation Number: [2025] EWHC 1079 (Comm)
Case No: CL-2024-000246
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 08/05/2025

Before :	LIONEL PERSEY KC SITTING AS A JUDGE OF THE HIGH COURT -----
Between :	AFRICAN EXPORT-IMPORT BANK - and - Claimant/Applicant (1) THE NATIONAL GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN (2) THE BANK OF SOUTH SUDAN Defendants/Respondents ----- ----- Rupert Allen and Charles Redmond (instructed by Hogan Lovells International LLP) for the Claimant The Defendants were not represented and did not appear Hearing date: 31 January 2025 -----

JUDGMENT

This judgment was handed down remotely at 10:30am on 8th May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

- ----- LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan
LIONEL PERSEY KC:

Introduction

1. In this matter the Claimant (“Afreximbank”) claims the sum of just over US\$650 million that is owed by the First Defendant (the “Republic”) pursuant to three Facility Agreements, the vast majority of which (i.e. c. US\$640 million) had been guaranteed by the Second Defendant (the “Bank”) pursuant to two Facility Agreements. 2. The claim is, Afreximbank says, both simple and straightforward. It contends that the sums claimed are indisputably due from the Republic and by the Bank. This is because the terms of the Facility Agreements are clear, the Defendants’ defaults are long-standing and patent and, in the case of the Republic, have been expressly acknowledged. Afreximbank asserts that neither Defendant has any real prospect of successfully defending the claim, and that there is no other compelling reason for the claims to be disposed of at a trial. While Afreximbank would be entitled on its case to apply for default judgment, it seeks a reasoned judgment from the Court on the merits to aid its efforts to enforce any judgment abroad. Accordingly, Afreximbank applies for permission to apply for summary judgment and, if permission is granted, for summary judgment on its claims against both Defendants. 3. Neither of the Defendants has filed an acknowledgement of service, and nor have they filed any defence to the claims made against them. They did not attend the online hearing before me. The evidence 4. The evidence before me consisted of two witness statements from Ms Shivani Ananth, an associate at Afreximbank’s solicitors Hogan Lovells International LLP, and a witness statement from Kudakwashe Matereke, employed by Afreximbank in the role of Regional Chief Operating Officer covering East Africa. Their evidence was supported by numerous exhibits, including the various agreements between the parties and correspondence between them. I accept the accounts given by them.

Background

5. 6. 7. The Parties Afreximbank is a multilateral financial institution headquartered in Egypt. Its mandate includes providing trade finance. The Republic is the National Government of the Republic of South Sudan. The Bank is the Bank of South Sudan. The Facility Agreements Pursuant to the Facility Agreements, Afreximbank provided USD term loan facilities to the Republic for various purposes, including trade-enabling infrastructure projects, working capital needs arising from the COVID-19 LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank

of South Sudan 8. 9. pandemic, and the procurement of medical supplies to mitigate the impact of the pandemic. In the first of these Agreements the Republic (as Borrower) and Afreximbank (as Mandated Lead Arranger, Agent, Security Trustee, and Original Lender) entered into a Term Loan Facility Agreement dated 11 October 2019 (and as amended on 3 August 2020) (the “2019 Facility Agreement”). The claim against the Republic arises under three Facility Agreements entered into between 2019 and 2020 pursuant to which Afreximbank advanced loans to the Republic. These were:-

- (1) The 2019 Facility Agreement. Pursuant to this Agreement Afreximbank made available to the Republic a loan facility of US\$400 million. The Republic drew down the full amount of this loan on 31 October 2019. This loan was repayable in equal quarterly instalments, with the final repayment due on 31 December 2022: see clause 6.1.
- (2) The August 2020 Facility Agreement. The Republic and Afreximbank entered into the August 2020 Facility Agreement on 3 August 2020. Afreximbank made available to the Republic a loan facility of US\$63 million. The Republic drew down the full amount of this loan on 30 October 2020. This loan was repayable in nine equal quarterly instalments, starting twelve months after drawdown, with the final repayment due on 30 October 2023: see clause 6.1.
- (3) The December 2020 Facility Agreement. The Republic and Afreximbank entered into the December 2020 Facility Agreement on 8 December 2020. Afreximbank made available to the Republic a loan facility of US\$250 million. The Republic drew down US\$193 million of this loan in December 2020. This loan was repayable in eight equal quarterly instalments, starting on 30 March 2022 and ending on 30 December 2023: see clause 6.1 and Schedule 7. The Guarantees The claim against the Bank arises under two guarantees made contemporaneously with the 2019 Facility Agreement and the December 2020 Facility Agreement.
- (1) The 2019 Guarantee. The Bank provided a guarantee and indemnity in relation to the Republic’s obligations under the 2019 Facility Agreement on 11 October 2019. Clause 2.1 was the key operative provision of the 2019 Guarantee, setting out as it did the Bank’s “on demand” obligations as guarantor and primary obligor. The Bank confirmed that the 2019 Guarantee continued in full force and effect by a Guarantee Confirmation Deed dated 3 August 2020 in relation to the 2019 Facility Agreement as amended, supplemented or extended on that date.
- (2) The 2020 Guarantee. The Bank provided a guarantee and indemnity in relation to the Republic’s obligations under the December 2020 Facility Agreement on 8 December 2020. The 2020 Guarantee is in materially the same terms as the 2019 Guarantee. Breach and claims LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan The Facility Agreements 11.

10. The Republic made some payments under the Facility Agreements initially until May 2022, but were substantially in default under all three of them in 2023. I am satisfied that these failures to repay each amounted to Events of Default under each of the Facility Agreements: see clause 22.25 of the 2019 Facility Agreement, clause 20.9 of the August 2020 Facility Agreement, and clause 22.25 of the December 2020 Facility Agreement. I am also satisfied that these Events of Default entitled Afreximbank to accelerate all amounts outstanding under the Facility Agreements, with the effect that all amounts accrued or outstanding under the Facility Agreements become immediately due and payable.
12. The 2019 Facility Agreement and August 2020 Facility Agreement also contain cross-default provisions (see Clause 22.4(f) of the 2019 and Clause 20.4 of the August 2020 Facility Agreements), which provided that an Event of Default under either facility amounts to an Event of Default under the other facility. In addition, the 2019 Facility Agreement and December 2020 Facility Agreement contained more general cross-default provisions in Clause 22.4 that applied if the Republic failed to pay any “Financial Indebtedness” in excess of US\$5 million when due, or if any creditor became entitled to accelerate the Republic’s obligation to pay such “Financial Indebtedness” prior to its specified maturity.
13. Afreximbank exercised its rights to accelerate the loans and sent letters of demand to the Republic dated 30 August 2023 pursuant to each of the Facility Agreements. Afreximbank repeated these demands for repayment in pre-action correspondence on 10 October 2023. Notwithstanding these demands, the Republic has, I find, in breach of the Facility Agreements, failed to repay any of the sums due thereunder. The Guarantees
14. The Republic’s defaults under the Facility Agreements entitled Afreximbank to have recourse to the Guarantees by sending a demand to the Bank. The Republic demanded payment of the sums due from the Bank pursuant to the Guarantees by letters dated 30 August 2023. These were sent at the same time as the letters of demand addressed to the Republic under the Facility Agreements. Afreximbank repeated these demands in pre-action correspondence on 10 October 2023. Notwithstanding these demands, the Bank has, I find, in breach of the Guarantees, failed to pay any of the sums due thereunder. Correspondence with the Republic
15. Afreximbank and the Republic were in correspondence in relation to the latter’s liabilities under the Facility Agreements until January 2024. In this correspondence, I am satisfied that the Republic repeatedly reaffirmed its commitment to regularise the position regarding the outstanding sums due under the Facility Agreements. Afreximbank refers, for example, to a “very productive” meeting with the Ministry of Finance of the Republic in September 2023 at which it had been agreed that the Ministry would present a repayment proposal based on the allocation of crude oil cargoes to Afreximbank. This proposal was not however fulfilled, with the Republic stating in a letter dated 5 January 2024 that this was LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan due to “unforeseen circumstances” in South Sudan including flooding, conflict in Sudan and fluctuating oil prices. In the same

letter, the President of South Sudan requested a restructuring the current loan and repayment term as well as the payment of interest. There is no suggestion in this correspondence that the Republic disputed its liability to Afreximbank for the sums claimed under the Facility Agreements.

16. The Bank has not responded to Afreximbank's letters of demand dated 30 August 2023, or to Afreximbank's letter of claim dated 10 October 2023. The Defendants' failure to engage
17. Both the Republic and the Bank have failed to engage substantively with these proceedings or this application. Neither has filed any acknowledgement of service or defence. No one attended the hearing on behalf of either Defendant. I was invited by Afreximbank to determine the applications in their absence, and to have regard, by analogy, to the factors identified in the criminal case of *R v Jones*

- [2001] EWCA Crim 168, [2001] QB 862 at [22(5)]. The factors identified in *Jones* were applied in determining whether to hear summary judgment applications against defendants who had not appeared and were not represented in the cases of *European Union v Syria* [2023] EWHC 1116 at [1]-[6] and in *Certain Underwriters at Lloyd's v Syrian Arab Republic* [2018] EWHC 385 (Comm) at [3]. The Court held in *Jones* that in deciding whether to permit a hearing to proceed against an absent defendant: "... The judge must have regard to all the circumstances of the case including, in particular: (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings; (iii) the likely length of such an adjournment; (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation; (v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence; (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; (vii) the risk of the jury reaching an improper conclusion about the absence of the defendant; (viii) the seriousness of the offence, which affects defendant, victim and public; (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates; (x) the effect of delay on the memories of witnesses ...". LIONEL PERSEY KC Approved Judgment *African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan*
18. The Claimant submitted that the following considerations pointed strongly in favour of my determining the application in circumstances where the Defendants had not appeared and were not represented.

- (1) Afreximbank has served the Claim Form and Particulars of Claim on the Defendants at the current address of Law Debenture, their appointed process agent. Law Debenture were appointed as process agents under each of the Contracts. The process agent confirmed to Hogan Lovells that they had “forwarded the relevant documentation to the contact details [they had] been provided with for each entity”; (3)
- (2) Afreximbank has also sent the Claim Form and Particulars of Claim by courier and email to addresses associated with each of the Defendants and also to the Embassy of the Republic in London. Hogan Lovells received confirmation of delivery from the courier and no email bounce-back, as well as acknowledgement of receipt of the documents by the Embassy; The application and supporting evidence were also served on the Defendants on Law Debenture and these materials were also sent by courier and email to the same addresses as the Claim Form and Particulars of Claim (including the London Embassy of the Republic). On this occasion Hogan Lovells received a delivery failure notice from the email that it had previously used for the Bank (without bounce-back) for the Claim Form and Particulars of Claim; however, both of the Defendants accepted the hard copy documents that were delivered by courier and no email bounce-back was received from the email to the Republic;
- (4) Afreximbank has also taken all reasonable steps to give the Defendants notice of the hearing before me as set out in Ms Ananth’s Second Witness Statement at §§12-17. In particular: (a) Email notifications of the listing appointment and the original hearing date on 29 November 2024 were sent to both Defendants on 29 July 2024 using the email addresses previously used.
- (b) On 2 August 2024, the Court notified both Defendants of the original listing of this hearing by email to the same email addresses.
- (c) Although Hogan Lovells received a delivery failure notice from the email address for the Bank: (i) there is no evidence that the email to the Republic was not received, and in any case (ii) Afreximbank also sent hard copies of the listing notices for the original hearing by courier to both of the Defendants on 22 November 2024, as well as to Law Debenture and the Embassy of the Republic in London (and all letters were successfully delivered).
- (d) The original hearing date on 29 November 2024 was vacated by the Court because there was no Judge available to hear the application. The Commercial Court Listing Officer has notified the Defendants (by email to the same addresses previously used) of the present hearing.
- (5) Neither of the Defendants has indicated any desire or intention to be represented at or attend and participate in this hearing. On the contrary, the Defendants appear to have made a deliberate choice not to engage substantively with these proceedings. The Defendants have not suggested that, given more time, they will participate in the proceedings. Accordingly, LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan there was no reason to believe that an adjournment would be likely to result in the Defendants attending the hearing at a later date. This is entirely consistent with the approach that they have taken to

date since being served with the Claim Form and Particulars of Claim. I also note that, on 28 January 2025, the Republic sent an email (in response to notifications sent by Afreximbank) under the cost of funds provisions of the Facility Agreements requesting a “financial reconciliation” (but not engaging with, or referring to, the claim or the application);

- (6) Although the judgment sought is for a substantial amount, there is a public interest in the matter proceeding to judgment without further delay. The sums claimed are long overdue, there is no apparent defence with any prospect of success, and an adjournment would consume more resources of both Afreximbank and the Court, and also prejudice other court users, for no identifiable benefit. 19. I find these considerations to be compelling. The Defendants have each of them been given full notice of these proceedings which are taking place in the agreed forum for the resolution of the parties’ disputes. They have declined to participate.
20. Afreximbank requires permission to apply for summary judgment in circumstances where neither the Republic nor the Bank has acknowledged service of the claim: see CPR 24.4(1). The principles governing such applications were summarised by Bryan J in *European Union v Syria* [2018] EWHC 1712 (Comm) at [61]-[62] and can be summarised as follows:
- (1) The purpose of the rule requiring permission to apply for summary judgment against a defendant prior to the filing of an acknowledgement of service is
- (a) to ensure that no application for summary judgment is made before a defendant has had an opportunity to participate in the proceedings, and (b) to protect a defendant who wishes to challenge the Court’s jurisdiction from having to engage on the merits pending such application. Permission should generally be granted only where the Court is satisfied that the claim has been validly served and that the Court has jurisdiction to hear it. (2) If those conditions as to valid service and jurisdiction are met, there is generally no reason why the Court should prevent a claimant with a legitimate claim from seeking summary judgment.
21. The fact that a summary judgment may be more readily enforced in other jurisdictions than a default judgment is a proper reason for seeking permission to apply for summary judgment under CPR 24.4(1). It is enough that the claimant reasonably believes that a summary judgment may be more readily enforced in other jurisdictions; the Court need not subject the basis for any such belief to minute examination: *DVB Bank SE v Vega Marine Ltd* [2020] EWHC 1494 (Comm) at [58] There is no requirement to obtain permission before issuing a summary judgment application. The two applications may be made in the same application notice. *LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan* 22. 23. 24. 25. Service I am satisfied that, as set out above, the proceedings, application and supporting evidence have all been served upon the Defendants. They were served upon them at the registered office of Law Debenture as the Defendants’ irrevocably appointed process agent. The current registered office of Law Debenture is different from the address that was specified in some of the Facility Agreements and Guarantees; but service on the

nominated process agent at its current registered office is valid: see e.g. *Trafigura v Republic of South Sudan* [2020] EWHC 2044 (Comm) at [22]. Indeed, as I have already noted above, Law Debenture accepted the documents and said that they had forwarded them to the Defendants. Although there is no reason to doubt this, it would be immaterial in any event since each of the clauses of the Facility Agreements and Guarantees by which Law Debenture was appointed as process agent provide expressly that any failure by the process agent to forward the documents to the relevant Defendant will not invalidate the proceedings. Service on Law Debenture therefore constituted valid service of the Claim Form on the Defendants by a contractually agreed method pursuant to CPR 6.11. So far as necessary, while no order to this effect was specifically sought in the application notice, Afreximbank also seeks (retrospective) permission for all other documents in these proceedings to be served on the Defendants via its appointed process agent Law Debenture at the same address pursuant to CPR 6.27 (as in *DVB Bank v Vega Marine* [2020] EWHC 1494 (Comm) at [48]-[54]. There is, I find, plainly “good reason” to do so where the Defendants have failed to engage with the proceedings by filing an acknowledgement of service or giving an address for service (as required). Finally, as set out above and while unnecessary for valid service, Hogan Lovells also, out of an abundance of caution, sent the same documents by email and courier to the Defendants directly and to the Republic’s Embassy in London. I can therefore be confident that these documents have come to the Defendants’ attention. Jurisdiction

26. The Court’s jurisdiction is clearly established in the present case. The Court has jurisdiction as of right by service on the Defendants’ appointed process agent in the jurisdiction. Each of the contracts in issue contains an exclusive jurisdiction clause in favour of the Courts of England and Wales: see Clause 40.1 of the 2019 Facility Agreement; Clause 35.1 of the August 2020 Facility Agreement; Clause 40.1 of the December 2020 Facility Agreement, Clause 18.1 of the 2019 Guarantee, and Clause 18.2 of the 2020 Guarantee. I am satisfied that there are no grounds for suggesting that any other jurisdiction would be the forum conveniens for bringing this claim. In any event, even if a properly arguable jurisdiction challenge could have been mounted, the time for doing so has long since expired.
27. Afreximbank seeks permission to apply for summary judgment because it believes that a reasoned judgment from the English Court on the merits of the claims may LIONEL PERSEY KC Approved Judgment *African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan* assist with enforcement. This was acknowledged to be the position in another recent case against the Defendants in *Trafigura v Republic of South Sudan* [2020] EWHC 2044 (Comm).
28. The principles governing summary judgment applications are very well known: see *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] per Lewison J. The claims in the present case are straightforward ones for debt under the Facility Agreements or for damages and/or debt under the Guarantees. The claims are all based squarely on the express terms of the Facility Agreements and Guarantees. These are unambiguous and clear. There are no

facts in dispute and accordingly there is no basis to conclude that disclosure or witness evidence would shed any further light on the claims or give rise to any potential ground of defence. Indeed, as I have already noted above, the Republic expressly acknowledged the debt in pre-action correspondence. The Bank has failed to participate at all. 29. I am satisfied that the Defendants have no real prospect of successfully defending the claims against them. Nor is there any other compelling reason for a trial. Other matters

30. Mr Allen and Mr Redmond very properly addressed those points which they considered that the Defendants might have taken if they had appeared in these proceedings. They considered sovereign immunity.
 31. The Republic is a sovereign state and the Bank is the central bank of the Republic. The Court must therefore satisfy itself that the Defendants could not claim sovereign immunity, even if they do not appear: see State Immunity Act (“SIA”) 1978, s 1(2). The general rule is that a foreign state is immune from the jurisdiction of the English courts: SIA 1978, s 14(1)-(2). A state’s central bank or monetary authority also enjoys certain other privileges that are not presently relevant even if it is a separate entity from the state: see SIA 1978, s 14(3)-(4), and Dicey, Morris and Collins §9-022. A “state” includes the sovereign or other head of that state in his public capacity, the government of that state, and any department of that government. It does not, however, include any entity which is distinct from the executive organs of the government of the state and which is capable of suing or being sued (a “separate entity”). A separate entity is immune if, and only if, the proceedings relate to anything done by it in the exercise of sovereign authority and the circumstances are such that a state would have been immune.
 32. There are a number of exceptions to state immunity, two of which are in my judgment clearly applicable to the claims against both of the Defendants: First, each of the Defendants has submitted to the jurisdiction of the English Courts by a “prior written agreement” under section 2 of the SIA 1978; and secondly, these are proceedings relating to a “commercial transaction” entered into by a state under section 3(1)(a) of the SIA 1978.
- (1) As I have noted above, the Facility Agreements and Guarantees each contain express exclusive jurisdiction clauses in favour of the English Courts. The LIONEL PERSEY KC Approved Judgment *African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan* (2) Facility Agreements and the Guarantees also include express waiver of immunity clauses. These are each sufficient to satisfy the requirement for a “prior written agreement” pursuant to SIA 1978, s 2. The SIA 1978 provides by section 3(1)(a) that a state is not immune as respects proceedings relating to a “commercial transaction” entered into by the state. A “commercial transaction” is defined by section 3(3)(b) as including “any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation”. The agreements at issue in the present case are each “loans” or “transaction[s] for the provision of finance” (in the case of the Facility Agreements) or “guarantee[s] or [indemnities] in respect of any such transaction” (in the case of the

- Guarantees). I am satisfied that neither Defendant would have been able to successfully assert a claim for sovereign immunity in the present case. Quantum Principal sums due
33. The calculation of the amounts due is explained in Ananth 1 §20, Ananth 2 §§31- 36 and Matereke 1. The latter is a short additional witness statement which explains, corrects, and apologises for certain errors which the Bank identified in the original loan statements, and which are corrected in the Amended Appendices (Matereke 1 §§25-28. For good order, Afreximbank has applied by notice dated 22 January 2025 for permission to amend its Claim Form and Particulars of Claim to reflect the figures now claimed and I give that permission.
34. Each of the agreements also provides that any certification or determination by Afreximbank of a rate or amount under (inter alia) the Facility Agreements is to be, in the absence of a manifest error, conclusive evidence of the matters to which it relates: see Clause 32 of the 2019 Facility Agreement, Clause 27.2 of the August 2020 Facility Agreement; and Clause 32.2 of the December 2020 Facility Agreement. I am satisfied that the loan statements provided in the Amended Appendices are effective certifications or determinations by Afreximbank within the meaning of those provisions: see Lewison: The Interpretation of Contracts (8th ed) at §§14.37–14.39.
35. Afreximbank's claims (excluding its claims for post-judgment and for costs) against the Republic are in the total amount of US\$657,065,045.63, made up as follows: (1) 2019 Facility Agreement. Afreximbank claims to 30 January 2025, being the date of Amended Appendix A, a total of US\$354,378,048.29, comprising US\$230,993,381.82 in unpaid principal and US\$123,384,666.47 in nominal (US\$14,486,258.11) and default interest (US\$108,898,408.36).
- (2) August 2020 Facility Agreement. Afreximbank claims to 31 January 2025, being the date of Amended Appendix B, a total of US\$17,192,332.06, comprising US\$11,391,162.27 in unpaid principal and US\$5,801,169.79 in nominal (US\$2,193,321.23) and default interest (US\$3,607,848.56). LIONEL PERSEY KC Approved Judgment African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan
- (3) December 2020 Facility Agreement. Afreximbank claims to 31 January 2025, being the date of Amended Appendix C, a total of US\$285,494,665.28, comprising US\$187,037,697.92 in unpaid principal and US\$98,456,967.36 in nominal (US\$28,007,046.95) and default interest (US\$70,449,920.41).
36. The sums claimed under the 2019 Facility Agreement and December 2020 Facility Agreement are also claimed from the Bank under the Guarantees. The total amount claimed by Afreximbank from the Bank is therefore US\$639,872,713.57. 37. I find that Afreximbank is entitled to recover the sums that it now claims from the Republic and from the Bank.
- Interest
38. All of the Facility Agreements contain provisions for contractual interest and default interest in materially identical terms: see Clause 9 of the 2019 Facility Agreement, clause 8 of the August 2020 Facility Agreement, and clause 9 of the December 2020 Facility Agreement.

- (1) The rate of contractual interest is calculated as the aggregate of: (i) the Margin; and (ii) LIBOR (as defined). Margin is defined as 7.5% p.a. under the 2019 Facility Agreement, 6% p.a. under the August 2020 Facility Agreement, and 7% p.a. under the December 2020 Facility Agreement.
 - (2) The default interest rate is 2% p.a. higher than the rate which would otherwise have been payable. This higher rate applies from the due date until actual payment (both before and after judgment). 39. I am satisfied that Afreximbank is entitled to contractual interest under these provisions. There is, however, a discrete issue that I must consider in light of the LIBOR cessation. Any successor synthetic LIBOR rate that fell within the meaning of the definition of Screen Rate ceased to be published on 30 September
2024. The Facility Agreements contain fall-back provisions – the cost of funds provisions – which Afreximbank has used to calculate the interest due for the final interest period for each Facility Agreement. Afreximbank is required under the Facility Agreements to notify the Republic as soon as practicable that the cost of funds fall-back provisions apply. Afreximbank in fact only notified the Republic that the cost of funds provisions applied and of the applicable rates by letters that were sent on 28 January 2025 (but dated 17 January 2025). Afreximbank has acknowledged that this notification was only recently sent. However, the Republic in fact replied to these notifications on the same day by email requesting a “financial reconciliation”. I am satisfied that the Republic did not suffer any prejudice as a result of this delayed notification. This does not in any event have any bearing on Afreximbank’s entitlement to interest at the notified rates.
40. Afreximbank also claims post-judgment interest under section 44A of the Administration of Justice Act 1970 (the “AJA 1970”) because the judgment sought is in a foreign currency. The Court is entitled to award interest under section 44A of the AJA 1970 at any rate it thinks fit. The appropriate approach is LIONEL PERSEY KC Approved Judgment *African Export-Import Bank v The National Government of the Republic of South Sudan & The Bank of South Sudan* to award interest by reference to the compensatory principle: see *Novoship (UK) Ltd v Mikhaylyuk* [2015] QB 499 at [128]-[138]. Where, however, the parties have agreed by contract that post-judgment interest is payable at a particular rate, the Court can apply that agreed rate when exercising its discretion under section 44A, notwithstanding that the contractual right to interest merges with the judgment: *Law Debenture Trust Corp Plc v Ukraine* [2017] EWHC 1902 (Comm) [11]-[13].
41. Afreximbank has taken the simple and pragmatic approach in relation to post-judgment interest of limiting its claim under section 44A to simple interest at a fixed rate of 13.5% on the judgment debt, even though Afreximbank would be entitled (on the basis of the rates currently applicable to the Republic’s borrowing) to a higher rate by reference to the contractual (variable) default interest provisions.

Conclusion

42. I find that Afreximbank is entitled to apply for and to enter summary judgment against the Defendants in the following amounts (including interest up to 31 January 2025): (1) (2) against the Republic US\$657,065,045.63; and against the Bank: US\$639,872,713.57. 43. I further order that:
- (1) The Defendants do pay interest from and after 31 January 2025 until payment; and that
 - (2) Afreximbank is entitled to recover its costs of these proceedings and of this application on the indemnity basis pursuant to (i) clause 17.4 of the 2019 Facility Agreement; (ii) clause 16.3 of the August 2020 Facility Agreement; and (iii) clause 17.4 of the December 2020 Facility Agreement. I assess the cost of these proceedings (excluding the costs of this application) in the sum of £69,704.47 and the costs of this application in the sum of £54,759.33.

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