

## Case 4630130312

Court	Circuit	Case No.	Judgment pronounced	Judgment issued
Al-Qassim Court of Appeal	Civil	4630130312	–	August 15, 2024

### Facts

Praise be to God, and peace and blessings be upon the final Prophet.

On August 19, 2023 (3/2/1445H), the First Civil Circuit of the Qassim Court of Appeal convened its session via videoconference to consider the case relating to an annulment action against an arbitral award issued on May 27, 2024 (19/11/1445H) in the dispute between the plaintiff, [...] Real Estate Company [the respondent in the arbitration], and the defendant, [...] [the claimant in the arbitration].<sup>1</sup>

The plaintiff [...], holder of National ID No. [...], appeared at the hearing in his capacity as attorney under Power of Attorney No. [...] for [...], a Saudi national holding Civil Registry No. [...], pursuant to Power of Attorney No. [...] dated May 27, 2014 (19/11/1446H), issued via the Electronic Power of Attorney Services and granted by [...], a Saudi national with Civil Registry No. [...].

The defendant [...], holder of National ID No. [...], did not appear, nor did any representative attend on his behalf. No defense was submitted, and no reason for non-attendance was provided, despite proper notification of the hearing date under Service of Process No. [...].

After confirming the action had been filed within the statutory time limit prescribed by Article 51 of the Arbitration Law, the plaintiff's attorney was invited to present his claim. He submitted the following via the chat function:

We hereby submit to Your Honors this petition seeking the annulment of the arbitral award issued by a sole arbitrator, Dr. [...], on May 27, 2024 (19/11/1445H), in the dispute between [...] and [...] Real Estate Company, as follows:

[...] entered into a contract with [...] on February 7, 2012 (15/8/1433H) for the commercial exploitation of land located in Buraydah, east of Al-Wasiti, for a

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<sup>1</sup> Identifying information in this judgment has been redacted to protect personal and sensitive data. Editorial insertions in square brackets have been made by the SCCA team for clarity or completeness and do not appear in the original Arabic text.

term of 16 years from the date he took possession of the property on February 7, 2012 (15/8/1433H), excluding the first year, with an annual rent of SAR 60,000 for each of the subsequent 15 years.

[...] paid the rent for the second and third years. However, it was unable to obtain municipal licenses or sublease [the land] due to the absence of the necessary powers of attorney.

The claimant [...] initiated arbitration proceedings against [...] Real Estate Company—not against [...]—seeking: (1) payment of rent for the years from 1435H to 1444H; (2) rescission of the contract; and (3) reimbursement of legal and arbitration fees.

During the arbitral proceedings, several pleas were raised, including set-off, partial satisfaction of the claimed amounts, and the existence of a settlement agreement concluded during the proceedings and supported by witness testimony, as recorded in the arbitral award (attached).

The arbitral tribunal issued its award, the conclusion of which provides as follows:

First: The investment contract relating to the plot of land located in the city of Buraydah, east of Al-Wasiti, under Deed No. [...] dated March 3, 2002 (19/12/1422H), issued by the Buraydah General Court, is hereby rescinded.

Second: [...], for [...] Real Estate Company, Registration No. [...], which was converted into an individual establishment and subsequently deregistered, is ordered to vacate the land subject of the investment contract and deliver possession to the claimant.

Third: [...] is ordered to pay the claimant the rent due to him under the said contract, amounting to SAR 435,000.

Fourth: [...] is ordered to pay the legal fees incurred by the claimant, assessed by the arbitrator at 10 percent of the awarded amount, totaling SAR 43,500.

Fifth: [...] is ordered to pay the claimant the actual arbitration costs incurred by the claimant, amounting to SAR 27,500.

Description of the arbitration procedures:

Arbitration was adopted as the method of dispute resolution based on Clause 23 of the contract dated February 7, 2012 (15/8/1433H) concluded between [...] Real Estate Company and [...], and drafted on the letterhead of Dr. [...], Office for Arbitration and Legal Consultations.

The information relating to the arbitration and its procedures is as follows:

Claimant: [...]

Respondent: [...] Real Estate Company.

Award debtor: [...].

Arbitral tribunal:

The tribunal was constituted by agreement between the parties, comprising a sole arbitrator, Dr. [...], holder of Civil Registry No. [...], with Mr. [...] acting as secretary to the tribunal.

Fees:

The arbitral tribunal fees amounted to SAR 50,000 for the arbitrator and SAR 5,000 for the secretary, to be shared equally between the parties.

Seat of Arbitration: City of Buraydah.

Governing rules:

The arbitration procedures are detailed on page 2 of the arbitral award. The governing law agreed by the parties is the Saudi Arbitration Law. Any matters not addressed therein shall be governed by the Law of Civil Procedure.

Grounds for annulment:

Ground 1: Violation of the parties' agreement to apply the Law of Civil Procedure regarding the interruption of proceedings

Legal basis:

Article 50 (1) (d) of the Arbitration Law provides that an arbitral award may be annulled:

If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.

The parties agreed that the arbitration procedures would be conducted in accordance with the Law of Civil Procedure in matters not addressed by Arbitration Law, as stated in the award (page 3, line 6).

Relevant statutory provisions violated:

Article 88 (1) of the Law of Civil Procedure, which provides:

Unless the case is ready for judgment on its merits, the proceedings shall be interrupted by the death of one of the parties, [or] the loss of a party's capacity to litigate.

Article 91 (2) of the Law of Civil Procedure, which provides:

If a cause of interruption occurs prior to the first session scheduled for consideration of the proceedings, the provisions on interruption shall not apply, and the claimant shall submit a new statement of claim against the successor of the party responsible for the cause of interruption in accordance with the general provisions of territorial jurisdiction.

It is established that the dissolution of legal personality entails the loss of its capacity to litigate, as legal capacity is a prerequisite for legal personality, as affirmed by Article 18 (c) of the Law of Civil Transactions.

Accordingly, the dissolution of a company's legal personality constitutes a ground for interruption of proceedings, as recognized in legal commentary, since the cessation of a necessary condition entails the cessation of its legal effects.

Location of the violation in the award:

Page 1, line 7 et seq.:

In order to consider, by means of arbitration, the dispute between Mr. [...] and [...] Real Estate Company.

Page 11, line 2 et seq.:

Whereas the company was converted into an individual establishment in the name of the respondent [...], holder of National ID No. [...], and subsequently deregistered.

Point of the violation:

The arbitral tribunal proceeded with the arbitration initially filed against the company and rendered an award therein, despite Article 91 (2) of the Law of Civil Procedure providing that, where a cause of interruption occurs prior to the first session, a new case must be filed against the successor of the party responsible for the cause of interruption (in this case, the owner of the establishment), and the proceedings in the existing case must not continue.

Article 88 (1) of the Implementing Regulations of the Law of Civil Procedure provides:

Interruption of litigation due to death or loss of capacity shall be recognized as of the date of such event and not the date on which the circuit becomes aware of it.

Accordingly, the award subject to this annulment action violated the parties' agreement that the dispute would be governed by the provisions of the Law of Civil Procedure.

Effect of the violation:

This violation results in the formal invalidity of the award subject of the annulment action. It is impermissible to continue proceedings and render an award against any person other than the arbitration party identified in the arbitration claim and in the preamble to the award. This is so even where the award debtor was not joined to the proceedings, despite it being established that the cause of interruption arose prior to the filing of the case, as stated in the award (page 7, line 2 et seq.).

The dissolution of the company's legal personality occurred on May 3, 2017 (7/8/1438H), as acknowledged by the defendant in the present case (the claimant in the arbitration) and confirmed in the reasoning of the award (10, line 2 et seq.). The first session in the arbitration was held on December 31, 2023 (18/6/1445H). This demonstrates that the cause of interruption arose prior to the filing of the case and that the claim was initiated in breach of the procedural rules agreed by the parties to govern the arbitration.

Accordingly, the arbitral award must be annulled. The arbitral tribunal ought to have taken one of two courses: either to require the filing of a new arbitration case, since [...] is not a party to the present proceedings and it is impermissible to render an award against a non-party; or to order the joinder of [...] in his

personal capacity and proceed in accordance with Article 13 of the Implementing Regulations of the Arbitration Law, which provides:

The arbitral tribunal may accept the intervention or the joinder of a third party, subject to the approval of the parties to arbitration and the party to be joined.

Rendering an award against a person who is not a party to the proceedings, and who has not been joined therein, constitutes a breach of the established principle in jurisprudence that no judgment may be issued against a non-party. Such a breach renders the arbitral award subject to annulment.

Another point:

The action in which the existence of the arbitration clause was invoked (No. [...] dated July 16, 2012 [26/8/1433H], issued in Instrument No. [...] dated September 12, 2022 [16/2/1444H]) included the following:

The plaintiff submitted a copy of the Commercial Register extract for [...] Real Estate Company. The reason for the deregistration is the conversion of the company into an establishment, with the date of deregistration being May 3, 2017 (7/8/1438H).

Additionally, the declaration was attributed to [...], and the arbitral tribunal held him liable in his personal capacity, as stated in the award (page 11, line 1). Accordingly, it was impermissible to initiate the arbitration claim against any other party; rather, the claim should have been brought against him directly, or an application for joinder should have been made to include him in the proceedings. This did not occur.

Ground 2: Violation of the parties' agreement to apply the Arbitration Law and the Law of Civil Procedure in respect of interlocutory applications

Legal basis:

Article 50 (1) (d) of the Arbitration Law provides that an arbitral award may be annulled:

If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.

The parties agreed that the arbitration would be conducted in accordance with the Arbitration Law, and where it is silent, in accordance with the Law of Civil Procedure, as recorded in the award (page 3, line 6).

Relevant statutory provisions violated:

Article 30 (2) of the Arbitration Law, which provides:

Within the period of time agreed upon by the parties or determined by the arbitration tribunal, the defendant shall send to the plaintiff and to each arbitrator a written statement of his defense in response to the statement of claim. The defendant may include in his response any demands connected to the subject-matter of the dispute, or may assert any right arising therefrom for the purpose of set-off defense. This right may be asserted to the defendant even at a subsequent phase of the proceedings, if the arbitration tribunal deems such delay justified.

Article 84 of the Law of Civil Procedure, which provides:

The defendant may submit the following interlocutory applications:

- (a) application for judicial set-off
- (b) a claim for compensation for damage caused to the defendant by the original action or any procedure therein
- (c) any application which, if granted, would result in dismissing all or part of the plaintiff's requests or limiting the judgment in favor of the respondent
- (d) any application indivisibly connected to the original claim
- (e) any application permitted by the court in connection with the original claim

Article 84 (3) of the Implementing Regulations of the Law of Civil Procedure, which provides:

It is not required, for the purposes of judicial set-off, that the defendant's debt be established prior to the hearing; rather, the circuit shall determine the existence of the debt during the proceedings and then effect the set-off.

Article 84 (5) of the Implementing Regulations of the Law of Civil Procedure, which provides:

The defendant may submit an interlocutory application in the same manner as the plaintiff in the original case.

Location of the violation in the award:

Page 6, line 18 et seq.: The plaintiff [...] requested that the defendant [the claimant in the arbitration] be ordered to pay SAR 1,580,000, representing the value of the construction costs incurred by the plaintiff [...].

Page 11, line 15 et seq.: The arbitral tribunal failed to address this request adequately, stating only that the contract did not provide for such entitlement, without further justification, despite the fact that contractual provisions are not the sole source of obligations. Other recognized sources include public policy in the Kingdom and the principles of Islamic Sharia.

Point of the violation:

The tribunal dismissed the plaintiff's entitlement to the value of the buildings on the sole basis that no contractual provision governed such entitlement. This reasoning is deficient, as contractual terms are not the exclusive source of legal obligations. Other sources—particularly principles of Sharia and public policy—must also be considered.

The principles of Sharia, as articulated by the Islamic Fiqh Academy in Decision No. 182 in April–May 2009 (fifth month of 1430H), recognize and regulate build-operate-transfer arrangements. The decision defines such arrangements as agreements between an owner (or the owner's representative) and an investor for the construction and operation of a facility, with the investor entitled to collect returns—either wholly or as agreed—over a specified period, with the aim of recovering the invested capital and achieving a reasonable return, after which the facility is returned in a condition fit for its intended use.

Contemporary jurists characterize these arrangements as a form of lease in which the rent comprises two elements: (1) a monetary component, typically below market value, and (2) the construction cost. On this basis, the investor is entitled to recover the value of the construction, as this entitlement is inherent

in the legal characterization of the contract and the nature of the agreed consideration.

Moreover, established legal principles provide that a person who constructs, in good faith, on land not owned by him is entitled to the value of construction. In the present case, given that the contract has been rescinded without the company or its successor (the plaintiff) deriving benefit, the applicable provisions are either those governing construction on another's land in good faith (Art. 652 of the Law of Civil Transactions) or those governing improvements made by a lessee with the lessor's consent (Art. 422 (1) of the Law of Civil Transactions).

Effect of the violation:

These alternative sources of obligation establish that [...] is entitled to compensation and may seek recourse against the owner, whether under the rules governing construction in good faith or those applicable to improvements made to the leased property with the lessor's permission.

Reference to the Law of Civil Transactions is not advanced on the basis that the parties expressly agreed to its application to the arbitration; rather, it reflects principles of public policy in the Kingdom that may not be derogated from. This is further supported by their consistency with established juristic doctrine.

Accordingly, this constitutes a ground for annulment of the arbitral award pursuant to Article 50 (2) of the Arbitration Law.

Ground 3: Violation of the Arbitration Law through forfeiture of a plea that a matter falls outside the scope of the arbitration agreement if such plea is not raised immediately

Legal basis:

Article 50 (1) (d) of the Arbitration Law provides that an arbitral award may be annulled:

If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.

The parties agreed that the arbitration would be conducted in accordance with the Arbitration Law, as recorded in the award (page 3, line 6).

Relevant statutory provisions violated:

Article 20 (2) of the Arbitration Law, which provides:

The plea that the arbitration agreement does not include matters raised by the other party while the dispute is being reviewed must be raised immediately; otherwise, the right to raise such plea shall terminate. In all cases, the arbitration tribunal may accept a late plea if it deems the delay justified.

The effect of this provision is that where an arbitral tribunal considers whether a matter falls outside the scope of the arbitration agreement, it may not do so of its own initiative. Rather, the lack of jurisdiction must be invoked by a party. The Arbitration Law makes clear that the right to raise such plea is forfeited if it is not raised immediately. Accordingly, this is a procedural plea, and the arbitral tribunal is not permitted to rule on such pleas on its own initiative.

Location of the violation in the award:

Page 11, line 4 et seq.:

As for the claim for compensation or risk and the like, it is outside the jurisdiction of arbitration in this case.

Point of the violation:

The arbitral tribunal held that it lacked jurisdiction to consider certain claims submitted by the plaintiff, without any such plea having been raised by the claimant, as reflected in the pleadings. This constitutes a misapplication of Article 20 (2), as the tribunal is not permitted to decline jurisdiction of its own motion.

Effect of the violation:

The arbitral award is invalid insofar as it declares a lack of jurisdiction over the claims for compensation or risk. This defect renders the entire award invalid, as it prevented proper consideration of the set-off application, as explained under Ground 2. In this regard, Article 84 (3) of the Implementing Regulations of the Law of Civil Procedure provides:

It is not required, for the purposes of judicial set-off, that the defendant's debt be established prior to the hearing; rather, the circuit shall determine the existence of the debt during the proceedings and then effect the set-off.

Ground 4: Violation of the tenets of Islamic law on evidence concerning the administration of an oath

Legal basis:

Article 50 (1) (d) of the Arbitration Law provides that an arbitral award may be annulled:

If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.

The parties agreed that the arbitration would be conducted in accordance with the Arbitration Law, and where it is silent, in accordance with the Law of Civil Procedure, as recorded in the award (page 3, line 6).

Relevant statutory provisions violated:

Article 1 of the Law of Civil Procedure, which provides:

Courts shall apply the provisions of Islamic law to cases brought before them, as derived from the Quran and Sunnah, and any statutes issued by the ruler that do not contradict them.

Accordingly, the tenets of Islamic law and applicable statutory provisions form part of the governing framework of this arbitration. The relevant Sharia principle violated by the award is the rule on the administration of an oath, reflected in the Prophetic tradition: "The burden of proof is on the claimant, and the burden of the oath is upon the one who denies the claim."

Location of the violation in the award:

The arbitral tribunal disregarded the award debtor's request to administer an oath to the claimant in order to deny a material factual allegation. The award debtor stated that he had agreed with the owner to construct chalets of a particular specification (initially corrugated metal), but that municipal requirements necessitated reinforced concrete construction with additional features (each chalet having a swimming pool). He further alleged that he informed the defendant [the claimant in the arbitration] of this, and that the

claimant responded: "It's small change." This indicated that the defendant would cover the construction costs, particularly as the required modifications increased the project value from SAR 2,000,000 to SAR 6,000,000. This incident is recorded in the award (page 4, line 14 et seq.), and the request to administer an oath upon the claimant to deny it appears at page 6, line 13.

Point of the violation:

The arbitral tribunal failed to administer the requested oath (upon the claimant to deny this incident).

Effect of the violation:

Had the oath been administered and refused, it could have established that the claimant accepted the revised construction specifications and associated costs, acknowledged the agreed compensation, and accepted the consequent allocation of benefit to the respondent, including his right to lease and commercially exploit the property in light of the municipal requirements.

Note on the non-applicability of the SAR 100,000 limit under the Law of Evidence:

The provisions of the Law of Evidence concerning the SAR 100,000 do not apply to the present incident, for three reasons:

First: The parties did not agree that this arbitration would be governed by the Law of Evidence. Moreover, the rule restricting the administration of an oath in respect of amounts exceeding SAR 100,000 is not a matter of public policy such that derogation from it would render an arbitral award subject to annulment. Article 69 of the Procedural Guide to the Law of Evidence provides:

The court shall not, of its own initiative, admit evidence by witness testimony to prove the existence or expiration of the acts set forth in Article 66 (1) of the Law unless there is a statutory provision or agreement between the parties to the contrary.

If this rule were one of public policy, agreement to the contrary would not be permissible.

Second: Article 3 of the Procedural Guide to the Law of Evidence provides that the law in force at the time the facts or acts occurred governs the admissibility and validity of evidence.

Third: Even assuming the Law of Evidence applies to this arbitration, it remains permissible to administer an oath in relation to matters that would otherwise require written in proof, pursuant to Article 51 of the Law of Evidence.

Impact of the violation on the outcome of the award:

The arbitral tribunal disregarded the request to administer an oath despite the award debtor having expressly requested that it be administered to the claimant. As a result, material facts were not properly tested. Had the oath been administered and refused, it could have established that the claimant accepted and intended the revised construction specifications, acknowledged the resulting impossibility of deriving benefit, and accepted that such benefit would accrue to the respondent, enabling him to lease and commercially exploit the property in light of municipal requirements.

This, in turn, would have affected the claimant's entitlement to rent to the extent connected with that incident. The arbitral tribunal failed to consider the appropriate evidentiary mechanism for establishing these facts—namely, the administration of an oath.

Ground 5: Violation of the parties' agreement and the applicable law

Legal basis:

Article 50 (1) (d) of the Arbitration Law provides that an arbitral award may be annulled:

If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.

The parties agreed that the arbitration would be conducted in accordance with the Arbitration Law, and where it is silent, in accordance with the Law of Civil Procedure, as recorded in the award (page 3, line 6).

Relevant statutory provisions violated:

Article 1 of the Law of Civil Procedure, which provides:

Courts shall apply the provisions of Islamic law to cases brought before them, as derived from the Quran and Sunnah, and any statutes issued by the ruler that do not contradict them.

It follows that the principles of Islamic Sharia and applicable statutory provisions form part of the governing framework of this arbitration.

Further, Article 38 (1) (c) of the Arbitration Law provides:

When deciding the dispute, the arbitration tribunal shall take into account the terms of the contract subject of the dispute, and prevailing customs and practices applicable to the transaction as well as previous dealings between the two parties.

Article 50 (2) of the Arbitration Law provides:

The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of *Sharia* and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law.

Accordingly, both the parties' agreement and principles of public policy must be respected and enforced.

The relevant Sharia principle is reflected in the Prophetic tradition: "Muslims are bound by their conditions, except for a condition that renders lawful what is unlawful or unlawful what is lawful," together with the established juristic rule that "a condition must be observed to the fullest extent possible."

In addition, Article 720 (10) of the Law of Civil Transactions: "Contracts and conditions are presumed to be valid and binding."

The condition subject to the violation:

Clause 18 of the investment contract, which provides:

- (1) The contract shall terminate upon the expiry of its agreed term.
- (2) In the event that the first party [...] is dissolved or declared bankrupt, rent shall be payable only for the period during which the leased property was utilized up to the date of dissolution or declaration of

bankruptcy, and the second party [...] shall not be entitled to any rent for the remaining term of the contract.

Location of the violation in the award:

As stated in the grounds of the award (page 10, line 7 et seq.):

Thus, the period for which the claimant did not pay the rent was nine years and three months, starting from June 2, 2015 (15/8/1436H) until May 23, 2024 (15/11/1445H).

Further, at page 11, line 2 et seq.: “[...] in addition to the breach of the contract and the non-payment of the rent for nine years [...].”

In the conclusion of the award: “First: The investment contract [...] is hereby rescinded.” And: “Third: The respondent is ordered to pay the claimant the rent due to him under the said contract, amounting to SAR 435,000.”

Point of the violation:

The award orders rescission of the contract, relying on Clause 18, which provides that the dissolution of the company (the first party) results in the termination of the contract. However, Clause 18 characterizes this consequence as automatic termination, using the wording “shall end,” rather than granting a right to rescission to the second party.

It is therefore impermissible to order rescission of a contract that has already terminated automatically. As established in jurisprudence, what has already ceased to exist cannot be rescinded; to hold otherwise would amount to “obtaining the obtained,” which is legally and logical untenable.

Effect of the violation:

The award ordered payment of rent for a period of approximately seven years (from 1436H to 1445H), excluding two years during the COVID-19 pandemic. However, even if the other grounds for annulment were to be rejected, the second party (the claimant/defendant) would only be entitled—under Clause 18—to rent accrued prior to the dissolution of the company.

Clause 18 expressly provides that rent is payable only for the period during which the leased property is utilized up to the date of dissolution or

bankruptcy, and that the second party shall not be entitled to rent for the remaining term of the contract.

Concluding statement on the dissolution of the company:

The arbitral award treated the sequence of events affecting the company as constituting “dissolution” within the meaning of Clause 18. Accordingly, all consequences stipulated in that clause should have been applied.

Article 15 (3) and (5) of the 1965 Companies Law, and Article 16 (c) and (d) of the 2015 Companies Law, both provide that a company is dissolved upon the transfer of all shares to a single partner or upon agreement of the partners to dissolve it prior to the expiry of its term. It is well established that “dissolution” and “extinguishment” are synonymous in this context.

The conversion of a company into an individual establishment necessarily entails prior agreement of the partners to dissolve the company (see attached the partners’ decision to convert the company to an establishment in the present case). Accordingly, the contract termination under Clause 18 occurred on the date of the partners’ decision to convert the company, or on the deregistration date recorded by the Ministry of Commerce, that is, May 3, 2017 (7/8/1438H).

Although the arbitral tribunal acknowledged the conversion of the company to an individual establishment in its award, it failed to give effect to the legal consequences flowing from that fact, despite the relevant documents having been submitted and recorded in the award.

Ground 6: Insufficient reasoning (violation of the Arbitration Law and the parties’ agreement)

Legal basis:

Article 50 (1) (d) of the Arbitration Law provides that an arbitral award may be annulled:

If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.

The parties agreed that the arbitration would be conducted in accordance with the Arbitration Law, and where it is silent, in accordance with the Law of Civil Procedure, as recorded in the award (page 3, line 6).

Article 50 (2) of the Arbitration Law provides:

The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of *Sharia* and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law.

Relevant statutory provisions violated:

Article 42 (1) of the Arbitration Law, which stipulates:

The arbitral award shall be issued in writing and shall be reasoned and signed by the arbitrators. In the event of an arbitral tribunal composed of more than one arbitrator, the signatures of the majority of arbitrators shall be sufficient, provided that the reasons the minority did not sign are documented in the minutes of the case.

The basis for insufficient reasoning as a violation of the law:

The Supreme Court's principle in Decision No. 4227835 dated June 30, 2021 (20/11/1442H) provides that a lower court must address any material plea which, if valid, would affect the outcome of the judgment; failure to do so renders the judgment defective for insufficient reasoning, amounting to a violation of statute and warranting its overturning. In that case, the Supreme Court deemed the judgment to be in violation of the requirement established in the Law of Civil Procedure that a judge's ruling be reasoned. Analogously, Article 42 (1) of the Arbitration Law requires arbitral awards to be reasoned. Accordingly, insufficient reasoning in the arbitral award in the present case constitutes a violation of the law.

Location of the violation in the award:

The reasoning of the award as a whole, which fails to address several material grounds and pleas.

Point of the violation:

The Arbitration Law and public policy in the Kingdom require that arbitral awards be properly reasoned, in accordance with the relevant principles, rules, and regulations that apply. This includes the mandate to provide a reasoned response to material arguments that, if confirmed, could affect the outcome.

The award in this violates this requirement by failing to address several such material pleas.

Material grounds and pleas not addressed in the award:

First: Reconciliation between the claimant and [...]:

[...] submitted that a reconciliation had been reached, involving the leasing of the constructed units to a new lessee who would pay the construction value, with the claimant granting additional time. This plea appears in [...]’s memorandum (noted in the award on page 8, “First” item). However, the award does not expressly address it or assess evidence of its occurrence.

Effect: Reconciliation extinguishes the dispute, as recognized in jurisprudence and under Articles 391 and 401 of the Law of Civil Transactions, and is also reflected in Article 45 of the Arbitration Law. Had this plea been addressed and upheld, the claimant’s claim would have been lapsed by virtue of his agreement to the terms of the reconciliation, and thus the dispute resolved and disposed of in its entirety.

Second: Failure of the lessor to enable [...] Real Estate Company to benefit from the leased property:

[...] argued that the lessor [the claimant/defendant] failed to issue the necessary powers of attorney to obtain licenses, thereby preventing [...] Real Estate Company to use and commercially exploit the land. This plea appears in [...]’s memorandum (noted in the award on page 8, “Second” item). However, the award does not expressly address this plea.

Effect: It is a principle of public policy that a lessor must enable to lessee to benefit from the leased property; failure to do so negates the lessor’s entitlement to rent. Consideration of this plea could have materially altered the outcome.

Ground 7: Violation of the tenets of Sharia and public policy regarding the prohibition on ruling on matters not requested by the parties

Legal basis:

Article 50 (2) of the Arbitration Law provides:

The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of *Sharia* and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law.

Public policy principle violated:

The prohibition on ruling on matters not requested by the parties. This principle derives from the Prophetic statement: "I judge according to what I hear," and is reflected in the adversarial nature of proceedings as recognized by contemporary jurists. Were this not a general rule, adjudicators could rule on matters beyond the parties' claims.

Location of the violation in the award:

What is stated in the second order in the conclusion of the award:

[...], for [...] Real Estate Company, Registration No. [...], which was converted into an individual establishment and subsequently deregistered, is ordered to vacate the land subject of the investment contract and deliver possession to the claimant.

Point of the violation:

The claimant did not request eviction or delivery of the property in the statement of claim or in any subsequent submissions to the arbitral tribunal. Nevertheless, the tribunal's award included an order to vacate, thereby granting relief not sought by the prevailing party:

Third: [...] is ordered to pay the claimant the rent due to him under the said contract, amounting to SAR 435,000.

Moreover, the grounds for the award (page 10, line 7 et seq.) state:

Thus, the period for which the claimant did not pay the rent was nine years and three months, starting from June 2, 2015 (15/8/1436H) until May 23, 2024 (15/11/1445H).

Point of the violation:

In the statement of claim, the claimant sought rent only for the period from June 13, 2014 (15/8/1435H) to March 7, 2023 (15/8/1444H), and did not amend

this claim in any of his subsequent submissions. The tribunal itself acknowledged that rent for the years 1435H to 1436H was settled, and rent for the years 1441H to 1443H was forfeited—so why did it proceed award rent extending to February 24, 2024 (15/8/1445H) and an additional three months thereafter, until May 2024 (11/1445H), relief that was never claimed by the claimant?

Effect of the violation:

The tribunal's award reached an erroneous outcome when it determined the interest of one of the parties to the arbitration, then aligned with that party, and subsequently ruled in his favor based on the adjudicator's independent judgment of the determination of his interest. This is despite the fact that an adjudicator is not permitted to exercise independent judgment to arrive at an unclaimed interest. That is because this is a civil case rather than a public criminal case where the judge has a role in scrutinizing the legal characterization upon which a public prosecution is founded.

Requests:

Therefore, we request that the Court annul the arbitral award rendered by the arbitral tribunal comprising the sole arbitrator Dr. [...] on May 27, 2024 (19/11/1445H), in the dispute between [...] and [...] Real Estate Company, which ordered as follows:

First: The investment contract relating to the plot of land located in the city of Buraydah, east of Al-Wasiti, under Deed No. [...] dated March 3, 2002 (19/12/1422H), issued by the Buraydah General Court, is hereby rescinded.

Second: The respondent [...], holder of National ID No. [...] and the owner of [...] Real Estate Company, Registration No. [...], which was converted into an individual establishment and subsequently deregistered, is ordered to vacate the land located in the city of Buraydah, east of Al-Wasiti, under Deed No. [...] dated March 3, 2002 (19/12/1422H), issued by the Buraydah General Court, and deliver possession to the claimant, holder of National ID No. [...].

Third: The respondent [...], holder of National ID No. [...], is ordered to pay the claimant [...], holder of National ID No. [...], the rent due to him under the said contract, amounting to SAR 435,000.

Fourth: The respondent [...], holder of National ID No. [...], is ordered to pay the legal fees of the claimant [...], holder of National ID No. [...], assessed by the arbitrator at 10 percent of the awarded amount, totaling SAR 43,500.

Fifth: The respondent [...], holder of National ID No. [...], is ordered to pay the claimant [...], holder of National ID No. [...], the actual arbitration costs incurred by the claimant, amounting to SAR 27,500.

Whereas this session was held to review the defendant's defense and response to the action, he did not attend. The session was therefore adjourned for consideration of the case and issuance of a decision.

On August 12, 2024 (8/2/1446H), a subsequent session was convened. The plaintiff's attorney appeared, while the defendant [the claimant in the arbitration] did not attend, nor was he represented. He did not submit any defense or justification for his absence, despite having been duly notified of the hearing date under Service of Process No. [...].

When the plaintiff's attorney was asked about the lawsuit filed against his client before the Buraydah General Court under Instrument No. [...] dated September 12, 2022 (16/2/1444H), he stated that the arbitration clause had been invoked. He added that, after the arbitration proceedings were initiated and the award issued, he filed the present annulment action on the grounds set out in his petition, including issues relating to standing.

He further stated:

Invoking the arbitration clause does not give the claimant the right to initiate arbitration proceedings against the partner. The preamble of the award indicates that the plaintiff [the respondent in the arbitration] is [...] Real Estate Company; thus, the case was originally filed against the company. Subsequently, after several sessions, the arbitrator decided that, because the company had been dissolved and deregistered, standing would be transferred from the company to my client. Accordingly, the case should have been brought against [...] from the outset. Moreover, this is not the sole ground for annulment; additional grounds are set out in the petition.

The Court then asked him, in light of his statement that the case should have been filed against [...] from the outset, whether there existed an arbitration agreement between the defendant and his client [...]. He replied that by virtue of succession, the successor, [...], assumes the same obligations as the predecessor. As the case required further study and deliberation, the session was adjourned.

On August 15, 2024 (11/2/1446H), a further session was convened. The attorney for the plaintiff [...] was present, but the defendant [...] again failed to attend or be represented, and

submitted no defense or excuse for his absence, despite having been notified under Service of Process No. [...]. The pleadings were then formally closed, and the case reserved for judgment.

### **Reasoning**

Based on the foregoing, and upon review and consideration of the application and its attachments, and given that the plaintiff filed his statement of claim on July 25, 2024 (19/1/1446H), and was notified of the arbitral award upon its issuance on May 27, 2024 (19/11/1445H), the action was filed within the time frame prescribed by Article 51 (1) of the Arbitration Law promulgated by Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H), which provides:

An action for nullification of the arbitration award shall be filed by either party within 60 days following the date of notification of said party of the award; and such action is admissible even if the party invoking nullification waives his right to do so prior to the issuance of the arbitration award.

Accordingly, the action is admissible in form.

As to the merits, after reviewing the arbitral award and the statement of claim setting out the grounds for annulment under Article 50 (1) of the Arbitration Law, which provides:

(1) An action to nullify an arbitration award shall not be admitted except in the following cases:

- (a) If no arbitration agreement exists, or if such agreement is void, voidable, or terminated due to expiry of its term.
- (b) If either party, at the time of concluding the arbitration agreement, lacks legal capacity, pursuant to the law governing his capacity.
- (c) If either arbitration party fails to present his defense due to lack of proper notification of the appointment of an arbitrator or of the arbitration proceedings, or for any other reason beyond his control.
- (d) If the arbitration award excludes the application of any rules which the parties to arbitration agree to apply to the subject matter of the dispute.
- (e) If the composition of the arbitral tribunal or the appointment of arbitrators is carried out in a manner that violates this Law or the agreement of the parties.

(f) If the arbitration award rules on matters not included in the arbitration agreement. Nevertheless, if the sections of the award relating to matters subject to arbitration can be separated from those not subject thereto, then nullification shall apply only to the sections not subject to arbitration.

(g) If the arbitral tribunal fails to observe the conditions required for the award in a manner that affects its substance, or if the award is based on void arbitration proceedings that affect it.

And upon review of the land investment contract dated July 5, 2012 (15/8/1433H), which contains the arbitration clause and was concluded between [...] and [...] Real Estate Company.

The Court notes that the legal effects of the contract extend only to those contracting parties.

In light of the independent financial capacity of the company, distinct from that of its owner or partners, and in the absence of any arbitration agreement between the claimant [...] [the defendant in this action] and the respondent [...] [the plaintiff in this action], the Court finds that the arbitral tribunal lacked a valid basis to impose liability on the respondent.

Accordingly, the Court concludes that the arbitral award must be annulled.

## **Ruling**

The Court hereby rules as follows:

To annul the arbitral award rendered on May 27, 2024 (19/11/1445H), which provided:

First:

The investment contract relating to the plot of land located in the city of Buraydah, east of Al-Wasiti, under Deed No. [...] dated March 3, 2002 (19/12/1422H), issued by the Buraydah General Court, is hereby rescinded.

Second:

The respondent [...], holder of National ID No. [...] and the owner of [...] Real Estate Company, Registration No. [...], which was converted into an individual establishment and subsequently deregistered, is ordered to vacate the land located in the city of Buraydah, east of Al-Wasiti, under Deed No. [...] dated March 3, 2002 (19/12/1422H), issued by the Buraydah General Court, and deliver possession to the claimant [...], holder of National ID No. [...].

Third:

The respondent [...], the holder of National ID No. [...], is ordered to pay the claimant [...], holder of National ID No. [...], the rent due to him under the said contract, amounting to SAR 435,000.

Fourth:

The respondent [...], holder of National ID No. [...], is ordered to pay the legal fees of the claimant [...], holder of National ID No. [...], assessed by the arbitrator at 10 percent of the awarded amount, totaling SAR 43,500.

Fifth:

The respondent [...], holder of National ID No. [...], is ordered to pay the claimant [...], holder of National ID No. [...], the actual arbitration costs incurred by the claimant, amounting to SAR 27,500.

God grants success. May peace and blessings be upon our Prophet Muhammad, his family, and his companions.