

## Case 4630695739

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Riyadh Court of Appeal	Civil	4630695739	–	February 1, 2025

### Facts

On December 17, 2024 (16/6/1446H), at 10:15 a.m., the Eighth Civil Circuit of the Riyadh Court of Appeal held a hearing joined by members of the Circuit and the legal representatives of the plaintiff [the claimant in the arbitration] and defendant [the respondent in the arbitration].<sup>1</sup> When asked about the action [seeking annulment of the arbitral award], the plaintiff's attorney stated:

Your Honors, may God grant you success.

We hereby inform you that a contract was concluded between the first party [...] and the second party [...] for "farm management."<sup>2</sup>

The arbitration agreement contained in Clause 50 of the contract dated April 7, 2022 (6/9/1443H) provides for "an arbitrator." In the dispute with the defendant, an arbitral tribunal was appointed, whose particulars are as follows:

Saudi national, National ID No. [...], address [...], Kingdom of Saudi Arabia, Riyadh, mobile no. [...].

The arbitral tribunal issued its award in the dispute, ruling to dismiss the case. We were notified of the award on September 25, 2024 (22/3/1446H).

We object to the award in form due to a petition to disqualify the arbitrator.

Article 16 of the Arbitration Law provides:

An arbitrator shall have no interest in the dispute. He shall also disclose to the arbitration parties in writing, from the time of his appointment and throughout the arbitration proceedings, any circumstances likely to give

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<sup>1</sup> 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.

<sup>2</sup> Identifying information in this judgment has been redacted to protect personal and sensitive data.

rise to justifiable doubts as to his impartiality or independence, unless he has already informed them thereof.

Article 5 of its Implementing Regulations further provides:

An arbitrator may, upon a request for his disqualification, recuse himself from hearing a dispute without providing reasons for the recusal; such action shall not be deemed an admission by the arbitrator of the validity of the grounds cited by the party seeking disqualification.

Requests:

Accordingly, we request annulment of the arbitral award. This is my submission.

The plaintiff's attorney further added:

Your Honors, may God grant you success.

We hereby inform you that Petition No. [...], currently pending before you, was previously filed seeking to dismiss the arbitrator. The petition stated that a contract was concluded between the first party [...] and the second party [...] for "property management."

The arbitration location was seated in Riyadh, and the subject matter of the contract is unrelated to international trade. The arbitrator [...] was appointed by the first party in the dispute between them.

The grounds for dismissal are the existence of a working relationship between the arbitrator and the second party (i.e., the defendant). This is based on Article 16 of the Arbitration Law and Article 5 of its Implementing Regulations, and supported by witness testimony indicating a professional relationship and friendship between [...] and [...], of which the plaintiff was aware.

Requests:

Accordingly, we request the dismissal of the arbitrator. This is my submission.

The plaintiff also filed an action for the annulment of the arbitral award under Petition No. [...]. It states:

Your Honors, may God grant you success.

We hereby inform you that a contract was concluded between the first party [...] and the second party [...] for “farm management.”

The arbitration agreement contained in Clause 50 of the contract dated April 7, 2022 (6/9/1443H) provides for “an arbitrator.” In the dispute with the respondent, an arbitral tribunal was appointed, whose particulars are as follows:

Saudi national, National ID No. [...], address [...], Kingdom of Saudi Arabia, Riyadh, mobile no. [...].

The arbitral tribunal issued its award in the dispute, ruling to dismiss the case. We were notified of the award on September 25, 2024 (22/3/1446H).

We object to the award in form due to a petition to disqualify the arbitrator.

Article 16 of the Arbitration Law provides:

An arbitrator shall have no interest in the dispute. He shall also disclose to the arbitration parties in writing, from the time of his appointment and throughout the arbitration proceedings, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, unless he has already informed them thereof.

Article 5 of its Implementing Regulations further provides:

An arbitrator may, upon a request for his disqualification, recuse himself from hearing a dispute without providing reasons for the recusal; such action shall not be deemed an admission by the arbitrator of the validity of the grounds cited by the party seeking disqualification.

Requests:

Accordingly, we request annulment of the arbitral award. This is my submission.

Upon presentation of this statement, the defendant’s attorney responded:

Your Honor, Judge of the Eighth Civil Circuit at the Riyadh Court of Appeal, may the peace of God be upon him.

May the peace, mercy, and blessings of God be upon you.

We hereby inform you that the plaintiff previously filed Petition No. [...], pending before you, seeking the dismissal of the arbitrator. That petition was dismissed, and we therefore refer to our response therein to avoid repetition.

With respect to the petition to annul the arbitral award, pending before you under No. [...], we respond as follows:

As to form:

Article 18 of the Implementing Regulations of the Arbitration Law provides that:

The party filing the nullification action shall attach the following: (a) the original arbitral award or a certified copy thereof; (b) a true copy of the arbitration agreement.

Upon review of the attachments submitted with the action for annulment, we find that the plaintiff's attorney did not include any of these essential documents. Accordingly, the action is liable to dismissal on formal grounds.

As to the merits:

First:

Article 50 of the Arbitration Law stipulates that actions for annulment of an arbitral award are admissible only in the exhaustively enumerated circumstances set out therein. Upon review of these grounds, we do not find any that correspond to the plaintiff's reliance on Article 16 of the Arbitration Law and Article 5 (1) of its Implementing Regulations. Furthermore, Article 50 (4) of the Arbitration Law provides that:

The competent court shall consider the action for nullification in cases referred to in this Article without inspecting the facts and subject matter of the dispute.

Second:

Even if, for the sake of argument, we consider the action to annul the arbitral award, we find that the plaintiff's attorney relies on Article 16 (1) of the Arbitration Law and Article 5 (1) of its Implementing Regulations. We respond that Article 16 (1) addresses the arbitrator's duty, in the event of any relationship with either party, to disclose such circumstances in writing to both

parties. Article 5 (1) regulates the procedure for recusal, clarifying that an arbitrator may recuse himself without such recusal constituting an admission of the validity of the grounds invoked. Thus, the arbitrator may either reject the request or recuse himself, depending on whether the grounds are considered convincing. We emphasize that this provision is permissive in nature and does not impose a mandatory obligation.

Third:

The plaintiff's attorney asserts that the arbitral award should be set aside in form due to the petition to dismiss the arbitrator. In response, and as noted above, none of the circumstances permitting annulment are satisfied by the arguments advanced. The legislator has exhaustively defined the circumstances in which an arbitral award may be annulled. Moreover, Article 18 governs the procedures for challenging an arbitrator. Upon reviewing this provision, we find that none of the circumstances warranting dismissal of the arbitrator are present, irrespective of the admissibility of the annulment action.

Fourth:

Article 20 (3) of the Arbitration Law provides:

The arbitration tribunal shall decide on pleas referred to in paragraph (1) of this Article prior to deciding on the subject of the dispute. However, it may join said pleas to the subject and decide on both. If the arbitration tribunal decides to dismiss the plea, such plea may not be raised except through the filing of a case to nullify the arbitration award ending the entire dispute, pursuant to Article 54 of this Law.

The arbitral tribunal addressed these pleas in the reasoning of the award and ultimately rejected all the plaintiff's submissions before it. Upon reviewing the plaintiff's annulment application, we find that it is based on the filing of the petition to dismiss the arbitrator, without reliance on any of the grounds set out in Article 50 of the Arbitration Law, which exhaustively defines the circumstances permitting annulment. Moreover, the plaintiff did not seek annulment on the basis of the tribunal's rejection of the pleas raised during the arbitral proceedings.

Fifth:

We maintain all our pleas submitted in the claim pending before Your Honors under No. [...], which concluded with final Arbitral Award No. [...] dated September 17, 2024 (14/3/1446H). We also rely on the briefs submitted in the claim that is still pending before Your Honors under Petition No. [...], as everything contained in these two claims remains integral and determinative. To avoid unnecessary length and repetition, we simply refer thereto.

Sixth:

We also maintain the validity of the arbitral proceedings, including the appointment of the arbitrator who is the subject of the dismissal petition. The plaintiff previously challenged the validity of the arbitration clause before the General Court in Case No. [...] of January 2, 2024 (20/6/1445H), which resulted in a ruling confirming the validity of the clause for the appointment of a sole arbitrator. This ruling was upheld on appeal in Judgment No. [...] of April 18, 2024 (9/10/1445H). The plaintiff did not file an appeal before the Supreme Court, which indicates acceptance of the validity of the arbitrator's appointment. (See copies of the first-instance and appellate rulings attached).

The plaintiff subsequently filed another action before Your Honors under No. [...] on May 5, 2024 (26/10/1445H), seeking dismissal of the arbitrator. In that proceeding, the arbitrator was summoned by and directed to commence arbitration sessions, and the plaintiff was instructed to present his requests included in that claim before the arbitral tribunal. That action was ultimately dismissed by Your Honors. (See copy of the ruling attached).

Arbitration sessions were thereafter conducted on this basis, with both parties having agreed to all procedural aspects, including the appointment of a sole arbitrator, as previously established in their written agreement prior to these claims. The plaintiff, however, failed to submit a response before the arbitral tribunal. (See attached the arbitration agreement record, the arbitral award, and the parties' agreement on the appointment of arbitrator prior to the filing of the claims).

Notwithstanding the Circuit's direction to the plaintiff and arbitrator to initiate arbitration, the plaintiff did not comply and instead filed a further action seeking dismissal of the arbitrator. Two hearings have been held in that matter, which has not yet resulted in a final ruling. We have submitted evidence therein refuting the plaintiff's allegations. (See hearing minutes attached). The plaintiff has now brought the present action, which is defective in form and

unfounded on the merits. This constitutes the fourth action initiated by the claimant in an attempt to invalidate the arbitration clause without legal basis.

In light of the foregoing, it is evident that the plaintiff, in the [present] annulment action, has failed to invoke any of the grounds set out in Article 50 of the Arbitration Law permitting annulment of the arbitral award, nor has he challenged the arbitral tribunal's rejection of his requests during the proceedings.

Requests:

We therefore request that Your Honors dismiss the action for annulment of the arbitral award.

Upon presentation of this statement, the plaintiff's attorney responded as follows:

Your Honor, Presiding Judge of the Eighth Civil Circuit at the Riyadh Court of Appeal, may the peace of God be upon him.

Subject: Reply brief in response to the defendant's submission in Case No. [...]:

Your Honors, may God grant you success. We hereby submit evidence that the defendant's attorney's statements are incorrect, as follows:

As to form:

The defendant's attorney asserts that I did not attach to my action the original arbitral award, a certified copy thereof, or a true copy of the arbitration agreement. This is incorrect. These documents were in fact attached to the case file. If they had not been attached, the action would not have been accepted by the Case Verification Center. Accordingly, this argument is unfounded.

As to the merits:

The defendant's attorney correctly states that Article 50 of the Arbitration Law exhaustively sets out the grounds for annulment, and we rely on those provisions. Our claim is based on the following:

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.

Subparagraph g further provides:

If the arbitration 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.

In addition, paragraph 2 provides that the competent court shall, of its own initiative, annul the award if it violates the tenets of Islamic law and public policy in the Kingdom, the agreement of the parties, or if the subject matter is not arbitrable under this law.

Upon reviewing the arbitral award, we find that it violates the Arbitration Law, which is among the general statutes that govern arbitration in the Kingdom. In particular, it contravenes Article 24 (2), which provides:

In the absence of an agreement between the two parties to arbitration and the arbitrators regarding arbitrators' fees, the competent court shall decide the matter pursuant to a non-appealable decision. If the arbitrators are appointed by the competent court, said court shall determine their fees.

From the outset of the arbitration, we objected to the arbitrator's fees and requested that they be determined by the competent court; however, this was not done, in violation of the article.

The arbitral award also violates Article 34 (1), which provides:

If the plaintiff, without acceptable justification, fails to submit a written statement of his claim in accordance with Article 30(1) of this Law, the arbitration tribunal shall terminate the arbitration proceedings, unless otherwise agreed upon by the two arbitrating parties.

In this case, the plaintiff did not submit a written statement of claim for a justified reason, namely the pending petition for the recusal and dismissal of the arbitrator. This was not taken into account. Instead, the tribunal proceeded to terminate the proceedings and issue an award dismissing the claim, thereby precluding any claim for consideration of the case by the Court of Appeal.

Your Honors, we maintain that the arbitral award should be annulled because it was issued by an arbitrator who, in our view, has a relationship with the defendant and against whom a recusal request had been filed. That request was not properly considered, and it is not possible for the arbitration to be

impartial so long as it involves him. This constitutes a violation of the Arbitration Law, as previously demonstrated and reiterated.

The plaintiff's attorney seeks to characterize this merely as a rejected request and not a mandatory duty or obligation of the arbitrator. However, the award is invalid because it was issued by an arbitrator who is violating statutory provisions, and what is based on invalidity is itself invalid.

Requests:

We therefore maintain our claim and request that Your Honors rule to annul the arbitral award. God grants success.

Upon presentation of this statement, the defendant's attorney replied as follows:

Your Honor, Judge of the Eighth Civil Circuit at the Riyadh Court of Appeal, may the peace of God be upon him.

May peace, mercy, and blessings of God be upon you.

Subject: Reply brief submitted by the defendant regarding the claim filed by the plaintiff in Case No. [...].

We ask God Almighty to grant you success and fulfillment. With respect to the above, we hereby submit as follows:

First:

The plaintiff's attorney asserts, in the paragraph on form in his reply, that he attached the original arbitral award or a true copy of the arbitration agreement. This is incorrect, as no such documents appear in the Najiz electronic portal. This confirms non-compliance with Article 18 of the Implementing Regulations of the Arbitration Law, which provides:

The party filing the nullification action shall attach the following: (a) the original arbitral award or a certified copy thereof; (b) a true copy of the arbitration agreement.

Second:

The plaintiff's attorney further asserts that he has complied with Article 50 of the Arbitration Law and that his arguments fall within its scope, including his objection to the arbitrator's fees, which he claims to have raised before the

tribunal (while knowing that he had signed the arbitration agreement). This is incorrect. Article 50 exhaustively defines the grounds for annulment and does not provide merely illustrative examples. As stated in Rule 32 of Article 720 of the Law of Civil Transactions, “No opinion may be given in the presence of a text.” Moreover, if the plaintiff objected to the arbitrator’s fees, he should have initiated a separate action for their determination, to be decided by the competent court prior to the arbitration proceedings. It is not permissible to seek annulment of the arbitral award on this basis.

Third:

The plaintiff’s attorney contends that the arbitral award violated Article 34 (1), which provides:

If the plaintiff, without acceptable justification, fails to submit a written statement of his claim in accordance with Article 30 (1) of this Law, the arbitration tribunal shall terminate the arbitration proceedings, unless otherwise agreed upon by the two arbitrating parties.

He further argues that the failure to submit a written statement of his claim was justified by the pending petition for recusal and dismissal of the arbitrator. This is incorrect, as we addressed in the “Fourth” paragraph [on the merits] of our previous submission, to which we refer to avoid repetition.

Fourth:

Upon review of the plaintiff’s attorney’s reply and the statements set out in the statement of claim in the Najiz electronic portal, it is evident that the plaintiff’s attorney is floundering in his action. The claim initially seeks annulment of the arbitral award on a basis of a petition to dismiss the arbitrator, without presenting substantiated or convincing grounds. In the subsequent reply, the plaintiff’s attorney instead relies on an objection to the arbitral tribunal’s fees, without clearly identifying a recognized ground for annulment. No statutory provision supports such a basis for annulment.

Requests:

As a licensed practitioner, the plaintiff’s attorney’s transgression in this manner is unacceptable. In light of the foregoing, and as set out in our previous and present submissions, we maintain that the annulment action is unfounded.

We therefore request that Your Honors dismiss the action for annulment of the arbitral award.

Upon presentation of the foregoing to the plaintiff's attorney, he replied:

The defendant's attorney's submission offers no rebuttal [of our arguments], and we maintain our petition for annulment of the arbitral award.

At a subsequent hearing attended by members of the Circuit and the attorneys for both parties, and the case being ready for determination, the Circuit issued its ruling.

### **Reasoning**

Upon review of the case and the arbitral award, and given that the Circuit is competent to hear this case pursuant to Article 8 (1) of the Arbitration Law, and following consideration of the plaintiff's petition seeking annulment of the arbitral award issued on September 25, 2024 (22/3/1446H), and as the action was filed within the prescribed statutory period, it is admissible in form.

As to the merits:

Upon examination of the arbitral award, it is apparent that the plaintiff's submissions were not properly addressed. During the first session, the plaintiff submitted a petition for the recusal of the sole arbitrator. The arbitrator did not issue a decision on this petition and proceeded to consider the case, scheduling a second session. At that session, the plaintiff did not present his claim on the merits but reiterated his request to recuse the arbitrator based on the same grounds.

The arbitral tribunal did not issue any decision on the recusal request—whether by acceptance or rejection—nor did it formally address the petition while continuing the proceedings. In the next session, [the plaintiff] informed [the arbitrator] that he had filed a recusal action before the competent court, recorded as Case No. [...] dated September 17, 2024 [14/3/1446H], prior to the issuance of the award.

The arbitral award ultimately provided:

First: The claimant's claim is dismissed due to his failure to present his claim.

Second: The claimant, a Saudi national, National ID No. [...], is required to pay to the respondent, a Saudi national, National ID No. [...], the arbitration and secretariat fees he incurred, in the amount of SAR 70,000.

Third: All other requests of the parties are dismissed, as set out in the reasoning.

However, the award did not address the petition to disqualify the arbitrator, which had been submitted by the claimant prior to proceeding with the case. This constitutes a violation of Article 17 (1) of the Arbitration Law, which provides:

If the two parties to arbitration fail to agree on a procedure for disqualifying an arbitrator, the party who seeks to disqualify an arbitrator shall, within five days from the date of knowledge of the formation of the arbitration tribunal or of any circumstances justifying such disqualification, submit a written statement giving grounds for the disqualification to the arbitration tribunal. If the arbitrator sought to be disqualified fails to recuse himself or the other party rejects the petition for disqualification within five days from the date of submission thereof, the arbitration tribunal shall decide on the disqualification within 15 days from the date of receipt of such petition. If the disqualification is not successful, the party seeking disqualification may petition the competent court, within 30 days, to decide on the disqualification; said court's decision shall not be subject to any form of appeal.

Such a procedural omission falls within the grounds for annulment set out in Article 50 (1) (g) of the Arbitration Law, which provides that an action to annul an arbitral award shall be admissible:

If the arbitration 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.

Accordingly, the Circuit proceeds to the conclusion of its judgment.

## **Ruling**

The Circuit rules as follows:

First: To accept the annulment action in form and on the merits.

Second: To annul the arbitral award issued in the case, which provides:

First: The claimant's claim is dismissed due to his failure to present his claim.

Second: The claimant, a Saudi national, National ID No. [...], is required to pay to the respondent, a Saudi national, National ID No. [...], the arbitration and secretariat fees he incurred, in the amount of SAR 70,000.

Third: All other requests of the parties are dismissed, as set out in the reasoning.

This ruling is appealable before the Supreme Court in accordance with Article 52 of the Arbitration Law, which provides: "If the court decides the nullification of the award, its decision shall be subject to appeal within 30 days following the date of notification of such decision," and Article 17 (1) of the Implementing Regulations of the Arbitration Law.<sup>3</sup>

God grants success. May God's prayers and peace be upon our Prophet Muhammad and upon all his family and companions.

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<sup>3</sup> The correct reference is Article 51 (2) of the Arbitration Law.