

Case 4430821540

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Riyadh Court of Appeal	Civil	4430821540	–	April 13, 2023

Facts

The hearing was convened and attended by the attorney for [...] in the annulment action against the arbitral award and by the attorney representing the defendants [the claimants in the arbitration proceedings].¹ The attorney for [...] submitted the following claim:

Subject: Annulment action against the arbitral award in Case No. [...] in [...]H, issued by sole arbitrator [...], appointed pursuant to the judicial ruling of the Eighth Civil Circuit of the Riyadh Court of Appeal under Deed No. [...] dated [...]/2/17H to adjudicate the arbitration before the arbitral tribunal in Riyadh, with the conclusion as follows:

First: The respondent [... Commercial Company] [the plaintiff in the annulment action], Commercial Registration No. [...], is ordered to pay the claimants the amount of SAR 217,750, to be distributed such that a male shall receive a share equal to that of two females, as follows: SAR 54,437.50 to [...], SAR 54,437.50 to [...], SAR 54,437.50 to [...], SAR 27,218.75 to [...], and SAR 27,218.75 to [...].

The tribunal further dismisses the claimants' request to obligate the respondent to pay any amounts exceeding the sums stated above, and rejects the respondent's request to deduct amounts exceeding those specified.

Second: The respondent is ordered to pay value-added tax to claimant [...] corresponding to their share, amounting to SAR 3,873.50, but the request of the remaining claimants to obligate the respondent to pay value-added tax on their shares is rejected.

Third: The respondent is ordered to settle the electricity bill for account no. [...], dated [...]/11/12, in the amount of SAR 57.50, while the claimants'

¹ Identifying information and dates in this judgment have 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.

request to obligate the respondent to pay the water bill and other additional bills is rejected.

Fourth: The respondent is ordered to vacate the leased premises, consisting of a commercial unit (single opening, unit no. 8, with eight-meter frontage on the ground floor facing [...] Street), located at the intersection of [...] and [...], on Plot No. [...] under Subdivision No. [...], registered with the First Notary Public Office in Riyadh in the initial notarized Deed No. [...], dated [...] /5/11H, and the real estate Deed No. [...], dated [...] /7/3H.

Fifth: The respondent is ordered to pay the claimants SAR 60,050 as compensation for arbitration and attorney fees, to be distributed such that a male shall receive a share equal to twice that of a female, as follows: SAR 15,012.50 to [...], SAR 15,012.50 to [...], SAR 15,012.50 to [...], SAR 7,506.25 to [...], and SAR 7,506.25 to [...].

The tribunal dismisses any requests for amounts exceeding those specified above.

Facts

The claimants had submitted a claim to the arbitral tribunal in Case No. [...] dated [...]H, requesting payment of the rental period from 1/7/[...] to 30/12/[...], eviction from the property, payment of arbitration and attorney fees, value-added tax, and overdue utility bills.

The arbitral tribunal accepted the claim in form, and ruled as detailed above.

[We seek annulment of said award] on the following grounds.

As to form:

The arbitral award was issued and a copy was received on 15/6/[...]H. The present action was filed within the statutory time limit (30 days) provided by Article 179 of the Law of Civil Procedure. Accordingly, the action is admissible in form.

As to the merits:

We submit that the arbitral award is legally flawed because it is based on an incorrect and inconsistent characterization of the claim and thus warrants annulment. The grounds are summarized as follows.

First: Incorrect application of laws

The attorney for the respondent requested dismissal of the claimants' claim relating to arbitration fees based on a prior judicial ruling issued by the Eighth Civil Circuit of the Riyadh Court of Appeal under Deed No. [...], dated [...]2/17H, which stipulated that arbitration fees are to be borne equally between the parties. The arbitral tribunal ignored this provision.

Second: Incorrect application of Sharia

The plaintiff's eviction order was issued without legitimate justification under Sharia principles. My client had a legitimate interest in continuing the lease to preserve her business and client base. Moreover, the defendant had offered a settlement to pay the plaintiff the outstanding rent.

Established Sharia principles permit such reconciliation between disputing parties. Our Prophet Muhammad, peace be upon him, said: "Reconciliation is permissible between Muslims, except one which makes unlawful something lawful or lawful something unlawful." Our Prophet also said: "Muslims must be bound by their conditions." In the noble ethics of Sharia, reconciliation is encouraged, as it harmonizes the hearts of believers.

Moreover, Ibn Taymiyyah, may Allah have mercy on him, was asked about a man who leased endowed properties, made improvements to them, and recorded the work with experts. He was asked whether such a man could be exempted from certain obligations concerning the charitable endowment, and if so, whether such exemption would be recoverable if the lease term was terminated, and whether the rightful beneficiaries could raise an objection to the trustee. Ibn Taymiyyah replied:

If the lease concerns properties providing public benefit, such as baths, hotels, marketplaces, and the like, and the known benefit diminishes—for example, neighbors relocate, customers decrease due to fear, destruction, or intervention by authorities—the lessee's rent may be reduced proportionately to the decrease in known benefit, whether the trustee and beneficiaries consent or object. (*Majmu'a Al-Fatawa* 311/3)

From this, it follows that an impediment preventing full enjoyment of the leased benefit, or a partial loss thereof, may justify termination of the lease for the remaining period where certain benefits are obstructed; however, it does not justify termination merely because the lessee did not derive benefit from

the leased property prior to the expiry of the contract, nor due to force majeure affecting all parties equally.

The majority of jurists hold that termination of a lease on the basis of excuses is impermissible, as a lease constitutes a binding contract. A contract concluded by mutual consent may not be terminated except by mutual agreement. The Shafi'i school expressly provides that neither party may terminate a lease due to excuses, whether such excuses relate to a specific property or to a debt. Where the excuse does not affect the subject matter of the contract itself—such as a shortage of fuel for a bathhouse, inability to travel, or illness—it does not confer a right to terminate the contract or to reduce the rent.

Third: Prohibition of arbitrators or arbitral tribunals from fixing fees

Article 24 (2) of the Arbitration Law 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.

Moreover, the judgment issued by the Eighth Civil Circuit of the Riyadh Court of Appeal dated [...]2/17H expressly stipulated that the arbitration fees shall be borne equally. This establishes that the arbitral tribunal exceeded the limits of its authority by attempting to determine the fees, in contravention of the proper application of the Arbitration Law.

Fourth: Contradiction, insufficiency of reasoning, and error in legal deduction

The arbitral tribunal relied on an alleged agreement between the parties to justify imposing attorney and arbitration fees on the respondent, citing Clause 16 of the contract, which provides generally for dispute resolution through arbitration. However, this clause is of a general nature and does not specify the seat of arbitration, the arbitrators, the administering institution, or the applicable rules, as confirmed by the judgment of the [Riyadh] Court of Appeal Ruling No [...] dated [...]2/17H. This contradicts the tribunal's conclusion that the fees shall be borne equally.

Fifth: Absence of a causal link justifying arbitration and attorney fees

It is well established that entitlement to compensation requires the existence of three elements: fault, damage, and a causal link between them. In the absence of any one of these elements, compensation cannot be awarded.

In the present case, the element of fault is not established, as there is no evidence my client intentionally wronged the plaintiff or deliberately delayed performance with the intent of causing damage. Absent proof of such conduct, there exists no legal basis to impose compensation. Jurisprudence has consistently held that: “Where a party litigates in good faith, believing its claim to be valid or potentially valid, it shall not be liable for the losses incurred by the opposing party as a result of such litigation.”

Furthermore, the arbitral tribunal based its award of arbitration and legal fees on the ground that the claimants’ recourse to arbitration was warranted due to the respondent’s delayed in paying rent. However, it is established that the claimants had previously initiated proceedings before the ordinary courts on [...]H, at which time the respondent invoked the arbitration clause, resulting in a judgment declaring the claim inadmissible due to the existence of an arbitration agreement.

Given that Clause 16 of the contract expressly provides for dispute resolution through arbitration, the claimants’ initial recourse to the ordinary courts constitutes an error attributable to them, not the respondent.

Sixth: Failure to consider the impact of COVID-19 on the eviction claim

The arbitral tribunal failed to take into account [the effect of the COVID-19 pandemic on the contractual relationship between the parties, and in particular neglected to apply] Supreme Court Decision No. 45/M dated 8/5/[...]H, which provides that:

The landlord shall not have the right to terminate the contract if the tenant delays payment of rent during the period in which it was impossible to fully or partially utilize the leased premises due to the pandemic.

This provision clearly establishes that a delay in the payment of rent, where attributable to the inability to benefit from the leased premises as a result of the pandemic, does not justify termination of the lease or eviction of the tenant.

Notwithstanding this, the Circuit disregarded the extent to which the contract was affected by the pandemic, failed to take account of the Supreme Court

provision quoted above, [and failed to assess the degree of impairment to the leased benefit]. It likewise failed to consider that the respondent was entitled to a compensatory period corresponding to the duration during which the premises could not be utilized [due to the pandemic], by way of an extension equivalent to the period of disruption.

Accordingly, the tribunal ought to have rejected the claimants' request for eviction, in light of the existence of a force majeure event and exceptional circumstances beyond the control of the respondent.

Seventh: Failure to properly apply the legal effects of the COVID-19 pandemic on the claim for rental value

[The arbitral tribunal further failed to apply the relevant provisions governing the adjustment of rent in circumstances affected by the COVID-19 pandemic.] Paragraph 1 (a) of "Second" item of Supreme Court Decision No. 45/M dated 8/5/[...] provides that:

If, due to the pandemic, the tenant is unable to fully or partially utilize the leased premises, the Court shall reduce the rent in proportion to the decrease in the usual intended benefit.

From the foregoing, it is evident that [the respondent's] failure to pay rent resulted from a general inability arising from the accumulation of arrears from 1/7/[...] to the beginning of the pandemic in [...], which prevented my client from resolving the matter through amicable means.

[Moreover, it is established in jurisprudence that a lease remains a binding contract that is not terminated merely due to personal hardship]. As reported by Al-Athram, an early jurist of the Hanbali school:

I said to Abu Abdullah: "A man hired a camel, and when he arrived in Madinah he said: 'Cancel the lease for me.'"

[Abu Abdullah] said, "He is not entitled to that."

I said: "What if the lessee becomes ill in Madinah?"

He [Abu Abdullah] still did not grant him the right to terminate the lease because it is a binding contract, and its termination does not negate the consideration.

Accordingly, the arbitral tribunal should have dismissed the claimants' demand for full rental value, in recognition of the force majeure circumstances affecting the respondent.

Eighth: Non-entitlement to rental value during periods of full and partial closure

It is established, pursuant to the decisions of the Council of Ministers, that the establishment was subject to full closure during the initial phase of the COVID-19 pandemic. Furthermore, the establishment was materially affected throughout the pandemic years [...] and [...].

Notwithstanding this, the Expert Committee limited the deduction from the contractual rental value to 25 percent for a single year ([...]). The arbitral tribunal adopted the findings of the expert report, concluding that the impact of the pandemic on the lease subject to arbitration was confined to one year at a rate of 25 percent.

However, my client maintains that the impact of the pandemic extended over a period of two years, encompassing complete closure and partial operational restrictions. This position is supported by documentary evidence submitted before the tribunal, demonstrating a sustained decline in sales over that period when compared to preceding years.

Moreover, the tribunal failed to assess the cumulative effect of both full and partial closure periods. The adverse impact arising from partial closure should have been considered in conjunction with the periods of complete closure, rather than treated in isolation. Accordingly, the proper approach would have required increasing the percentage of deduction from the rental value during the periods of complete closure and extending such adjustment until [...]H.

It is well established in jurisprudence and judicial practice that the decisions issued by the Council of Ministers as part of the State's comprehensive plan to protect citizens from the repercussions of COVID-19 are binding and mandatory. Such measures were adopted to mitigate the effects of the pandemic and prevent its recurrence, and non-compliance therewith entails legal consequences.

In light of the foregoing, the arbitral award is inconsistent with binding decisions issued by competent authorities vested with jurisdiction over matters

related to the dispute. This constitutes a violation of Article 55 (2) (a) of the Arbitration Law, which provides that:

The award is not in conflict with a judgment or decision issued by a court, committee, or commission having jurisdiction to decide the dispute in the Kingdom of Saudi Arabia.

Accordingly, the arbitral tribunal ought to have dismissed the claimants' claim for rental value in recognition of the force majeure circumstances and exceptional conditions beyond the control of the respondent during the periods of full and partial closure and the continuing effects of the pandemic, which caused ongoing damage to the respondent.

Ninth: Lack of jurisdiction over the tax claim and failure to address the subject matter of the dispute

The arbitral tribunal relied on the claimants' tax registration certificate as a basis for awarding the claimed tax amount. However, such reliance is misplaced, as disputes relating to tax liabilities fall outside the scope of the arbitration agreement and are governed by a special statutory regime. Jurisdiction over such matters is vested in the Tax Dispute and Violation Resolution Committee.

Accordingly, the tribunal lacked jurisdiction to adjudicate the tax claim. Moreover, the tax liability in question rests with the claimants and cannot be transferred to the respondent. The respondent has already fulfilled their obligations in respect of "sales tax," whereas the claimants seek recovery of "real estate tax," which is distinct in nature. It is well established that real estate tax is legally borne by the property owner.

[It is further established that arbitral awards must not contravene decisions issued by competent authorities.] [As cited earlier in the "Eighth" ground,] Article 55 (2) (a) of the Arbitration Law provides that:

The award is not in conflict with a judgment or decision issued by a court, committee, or commission having jurisdiction to decide the dispute in the Kingdom of Saudi Arabia.

Tenth: Error and contradiction with judicial precedents and contractual provisions regarding the award of value-added tax

The law designates specific judicial bodies with exclusive jurisdiction to adjudicate tax disputes, namely the dispute resolution and appellate tax committees established under the Income Tax Law, issued by Royal Decree No. M/1 dated March 6, 20024 (15/1/1425H). Among these is the Tax Dispute and Violation Resolution Committee, which is vested with jurisdiction over such matters.

Upon review of the lease agreement, it is evident that it contains no provision addressing value-added tax. Accordingly, any such tax liability—if applicable—remains the responsibility of property owner, namely the claimants, in accordance with the Income Tax Law.

This position is further supported by judicial precedent. The General Court in Riyadh, in Case No. [...] dated [...], Instrument No. [...], issued by the Fiftieth General Circuit, held as follows: “The Court lacks subject-matter jurisdiction with respect to Value-Added Tax.”

Eleventh: Error and contradiction with judicial rulings and contractual provisions concerning eviction and the continuation of the lease

The arbitral tribunal ordered eviction on the basis of non-payment of rent, without properly apply the contractual provisions governing the continuation and renewal of the lease.

Although the claimants’ attorney acknowledged the expiry of the contractual term, such acknowledgment does not, in itself, constitute a refusal to continue the lease relationship. Upon examination of the contract, it is apparent that it contains no clause permitting termination on the ground of delayed payment.

Furthermore, the Tribunal failed to consider the extraordinary circumstances and repercussions of the COVID-19 pandemic. Moreover, Clause 4 of the lease agreement, which governs the duration and effectiveness of the contract, provides that: “The contract term is renewable for any further period.” This wording indicates that the lease is subject to successive renewals for equivalent periods, rather than a single fixed extension. The contract does not contain any condition granting the right to termination due to delay in the payment of rent.

This principle has been affirmed in judicial practice. In Case No. [...], Instrument No. [...], issued by the Eleventh Civil Circuit of the Riyadh Court of Appeal, the Court ruled:

To accept the appeal and overturn the judgment insofar as it ordered the defendant to vacate the property subject of the claim and deliver it to the plaintiff.

Twelfth: Lack of jurisdiction of the arbitral tribunal to adjudicate the eviction request

The arbitral tribunal relied on an acknowledgment by the respondent confirming the expiry of the lease agreement as of 31/12/[...]. However, such acknowledgment does not constitute an unequivocal expression of unwillingness to renew the lease.

On the contrary, the respondent expressly requested before the arbitral tribunal either the renewal of the lease or, at a minimum, the granting of a reasonable grace period to enable continued occupation of the premises pending relocation and the identification of suitable alternative premises, thereby mitigating the harm likely to be incurred by the respondent.

This position is supported by Clause 4 of the lease agreement, which governs the term and renewal of the contract and provides that:

The lease term shall be renewable for another period to be agreed upon by the two parties upon expiry of the contract, provided that a notice period of not less than two months is given for renewal or eviction by either party.

Thirteenth: Request to stay enforcement of the arbitral award pending determination of the merits

My client would suffer substantial harm if the arbitral award were enforced, particularly in light of the fact that the award includes an order for eviction subject to expedited enforcement, while my client does not currently have alternative premises to which he may relocate.

In such circumstances, it would be incumbent upon the arbitral tribunal to have granted a reasonable grace period for vacating the premises, in accordance with teaching of the Prophet Muhammad, peace be upon him, and the established jurisprudential maxim: "There should be neither harm nor reciprocation of harm."

This request is further supported by Article 54 of the Arbitration Law and its Implementing Regulations.

Requests:

Based on the foregoing, the applicant respectfully requests that the Honorable Court:

First: Accept the appeal in form, as it has been filed within the statutory time limit.

Second: On the merits, rule as follows:

First: Annul the arbitral award issued in Case No. [...], dated [...], rendered by the sole arbitrator in Riyadh.

Second: Re-adjudicate the dispute by dismissing the claim and rejecting all requests.

Third: Set aside the eviction order and order the continuation or renewal of the lease in accordance with Clause 4 of the contract and the judicial precedent previously referenced.

Fourth: Set aside the award of attorney's fees and arbitration costs, as well as the order for payment of value-added tax, for the reasons set out above.

When the foregoing was presented to the defendant's attorney, she responded as follows:

The appellant's submissions are unfounded. It is well established under the Arbitration Law that arbitral awards are binding and may not be challenged except on the limited grounds exhaustively enumerated in Article 50.

Upon review of the arbitral award, it is evident that it is valid and free from any violation of Sharia principles or mandatory statutory provisions. The objections raised by the appellant relate solely to the factual findings and merits of the award, which fall outside the scope of an annulment action provided by law.

Accordingly, the Court is precluded from re-examining such matters, as they do not constitute legally recognized grounds for annulment.

Requests:

We therefore respectfully request that Your Honors dismiss the annulment action and uphold the arbitral award.

When the matter was presented to the plaintiff's attorney, he stated:

I rely on and maintain all submissions previously filed in the annulment action.

At a subsequent hearing, both parties appeared through their respective counsel. The Court then closed the pleadings, having found the case ready for adjudication.

Reasoning

Since the annulment action was filed within the statutory period stipulated in Article 51 (1) of the Arbitration Law, it is admissible in form.

As to the merits, and insofar as the plaintiff seeks, through this action, the annulment of the arbitral award rendered in the dispute between the respondent [the plaintiff in this action] and the claimants [the defendants], dated 08/1/[...] (15/6/[...]H), reference is made to Article 50 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.

(2) 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.

(3) The arbitration agreement shall not terminate with the issuance of the competent court's decision nullifying the arbitration award unless the arbitration parties agree thereon or a decision nullifying the arbitration agreement is issued.

(4) 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.

Since the grounds invoked by the plaintiff in the annulment action do not fall within the exhaustively enumerated cases set out in the aforementioned article.

And since the Court is not permitted to review the facts and the merits of the dispute.

And since the arbitral award has addressed all matters submitted to arbitration within the framework of the arbitration agreement.

The arguments raised by the plaintiff lack a valid legal basis.

However, it is established that the arbitral tribunal lacks jurisdiction to adjudicate claims relating to value-added tax [as such matters fall within the competence of specialized tax adjudicatory bodies]. Accordingly, the portion of the arbitral award addressing value-added tax—namely the “Second” order—is vitiated by lack of jurisdiction and must therefore be annulled.

In light of the foregoing, the Court concludes that the annulment action must be dismissed on the merits in respect of all other aspects of the award, while partially upheld solely in relation to the aforementioned order.

Pursuant to Articles 51 (2) and 55 (2) (b) of the Arbitration Law, the Court proceeds to its ruling as set out below.

Ruling

The Circuit hereby rules as follows:

First: The annulment action is accepted in form, and on the merits solely with respect to the “Second” order of the arbitral award, and is dismissed on the merits in all other respects.

Second: The “Second” order of arbitral award is annulled, which provides:

The respondent is ordered to pay value-added tax to claimant [...] corresponding to their share, amounting to SAR 3,873.50, but the request of the remaining claimants to obligate the respondent to pay value-added tax on their shares is rejected.

Third: The annulment action is dismissed with respect to the remaining orders of the arbitral award, and the arbitral award dated 8/1/[...] (15/6/[...]H), issued in the dispute between the plaintiff in the annulment action [... Commercial Company] and the claimants [the defendants] [...], and issued by the arbitral tribunal composed of [...] as the sole presiding arbitrator, is upheld and ordered to be enforced in all respects, save for the “Second” order, which has been annulled.

The confirmed portions of the arbitral award provide as follows:

First: The respondent [... Commercial Company], Commercial Registration No. [...], is ordered to pay the claimants the amount of SAR 217,750, to be distributed such that a male shall receive a share equal to that of two females, as follows: SAR 54,437.50 to [...], SAR 54,437.50 to [...], SAR 54,437.50 to [...], SAR 27,218.75 to [...], and SAR 27,218.75 to [...].

The tribunal further dismisses the claimants’ request to obligate the respondent to pay any amounts exceeding the sums stated above, and rejects the respondent’s request to deduct amounts exceeding those specified.

Third: The respondent is ordered to settle the electricity bill for account no. [...], dated [...] /11/12, in the amount of SAR 57.50, while the claimants’ request to obligate the respondent to pay the water bill and other additional bills is rejected.

Fourth: The respondent is ordered to vacate the leased premises, consisting of a commercial unit (single opening, unit no. 8, with eight-meter frontage on the ground floor facing [...] Street), located at the intersection of [...] and [...], on Plot No. [...] under Subdivision No. [...], registered with the First Notary Public Office in Riyadh in the initial notarized Deed No. [...], dated [...] /5/11H, and the real estate Deed No. [...], dated [...] /7/3H.

Fifth: The respondent is ordered to pay the claimants SAR 60,050 as compensation for arbitration and attorney fees, to be distributed such that a

male shall receive a share equal to twice that of a female, as follows: SAR 15,012.50 to [...], SAR 15,012.50 to [...], SAR 15,012.50 to [...], SAR 7,506.25 to [...], and SAR 7,506.25 to [...].

The tribunal dismisses any requests for amounts exceeding those specified above.

This judgment results in the partial annulment of the arbitral award and its confirmation in all other respects.

The judgment shall be final and not subject to appeal, except with respect to the annulled portion concerning value-added tax, which may be challenged before the Supreme Court within 30 days from the date following notification of this judgment.