

Case 4430985146

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Riyadh Court of Appeal	Civil	4430985146	–	June 15, 2023

Facts

On 17/10/1446H, at 10:35 a.m., a hearing was convened, attended by the members of the Circuit and the plaintiff and the defendant.

When asked about the claim, the plaintiff stated:

I hereby submit to Your Honor this statement of objection to the arbitral award issued by the Real Estate Arbitral Tribunal [of the Saudi Real Estate Arbitration Center] [dated 9/7/1446H] in the case deposited with the Riyadh Court of Appeal under No. [...] dated 21/7/1446H.¹

The tribunal's award stated that a contract had been concluded between the first party [...] and the second party [...] concerning the Articles of Association of [...] Association. [The tribunal based its jurisdiction] on an arbitral clause contained in Clause 40 of the said articles, which provides that "any dispute, difference, or claim arising out of or in connection with these articles shall be settled by arbitration." The subject matter of the contract is not related to international trade.

An arbitral tribunal was constituted, and it issued its award ordering as follows:

First: Ordering the defendant to pay the amount of SAR 18,715 as fees of [...] Association.

Second: Ordering the defendant to pay arbitration fees, expenses, and the fees of the Saudi Real Estate Arbitration Center in the amount of SAR 1,900.

We were notified of the award on 15/7/1446H and raise the following grounds for annulment:

¹ 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.

Grounds for Annulment:

First:

Pursuant to Article 50 (1) (c) of the Arbitration Law, issued by Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H), and its Implementing Regulations, which provides that an annulment action is admissible where a party is unable to present his defense due to lack of proper notification of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond his control.

Second:

Pursuant to Article 5 of the Procedural Rules of the Saudi Real Estate Arbitration Center, which requires that notifications be sent to the party or its representative at the address provided, by means capable of producing written evidence of transmission, such as email, registered mail, fax, or any other means approved by the Center.

Requests:

Based on the grounds set out in first and second paragraphs, I request Your Excellency to annul the arbitral award issued against me in order to uphold the principles of fairness and justice.

I was not properly notified of the case or hearing dates at my contact details registered on the platform Mullak with the Real Estate General Authority (including my mobile number linked to the Absher electronic platform or my email address registered with [...]).² This prevented me from attending the hearings and presenting my defense. The award was thus rendered in absentia as a result of this lack of proper notification, which makes it subject to challenge before Your Excellency.

Accordingly, I request the annulment of the arbitral award. This is my claim.

Upon presentation of this claim, the defendant's attorney replied via the chat window [i.e., via electronic communication]:

There is no truth to the plaintiff's claim that he had not been notified of the hearings or the arbitral award. Communication did in fact take place between

² Mullak enables owners and tenants of joint real estate units to create a real estate owners' association.

the plaintiff and the Association's director by telephone calls and WhatsApp messages concerning the works of [...] on the plaintiff's mobile no. [...]. Moreover, the Saudi Real Estate Arbitration Center notified the plaintiff of the hearing link and the arbitral award on that same number, which belongs to the plaintiff.

As for his assertion that the number is not linked to the Absher platform, this does not relieve him of his statutory responsibility for notification. Registration in Absher is not a requirement under arbitration procedures. Rather, what matters is the contact number used by the owner of the residential unit in dealings with the Association, which, according to the plaintiff, is the number in question.

When this was put to the plaintiff in person, he stated:

The mobile number referenced is not the primary number registered with Absher nor the number registered with the official authorities, including the Real Estate General Authority. I was not notified of the hearings and had no knowledge of them. Although the number referred to is registered in my name, it is not in use and is not official. Notifications from the Authority are received on my primary mobile number.

The defendant's attorney, via the chat window, attached (1) a screenshot showing notification sent to the mobile number [...], with no replies thereto, and (2) WhatsApp messages on that number dating back to 2021.

In response, the plaintiff stated that the messages were old, that he no longer uses that number, and that he did not review the notifications sent to it.

The defendant's attorney maintained that the said number remains active and that the plaintiff participates through it in the Association's WhatsApp group.

When confronted with this, the plaintiff replied:

It is correct that this number was added to the Association's group long ago; however, I do not review messages on it due to my non-use of that number or of a WhatsApp account associated with it. I only accessed those messages after the award was issued and I became aware of the case.

Both parties confirmed that they relied on their previous submissions. Accordingly, the hearing was adjourned for deliberation and verification of the deposit.

[At a subsequent hearing held] on Thursday, 26/10/1446H, at 13:30 p.m., attended by the members of the Circuit and both parties, the Court reviewed the arbitral award issued by the sole arbitrator [...] dated 9/7/1446H.

The [Circuit confirmed that the] arbitration was conducted pursuant to the Articles of Association of [...] Association registered with the Real Estate General Authority under Union No. [...], which provided in Article 40 that disputes shall be resolved through arbitration administered by the Saudi Real Estate Arbitration Center. The [Circuit confirmed that the] subject matter of the dispute concerns payment of Association's fees.

As the case was ready for adjudication, the proceedings were closed.

Reasoning

Based on the foregoing and the submissions set out, and given that the sole arbitrator [...] was appointed by the Saudi Real Estate Arbitration Center in accordance with the arbitration clause governing the dispute between the parties, and that the arbitral tribunal issued its award dated 9/7/1446H, which provides as follows:

First: Ordering the defendant to pay the amount of SAR 18,715 as fees of [...] Association.

Second: Ordering the defendant to pay arbitration fees, expenses, and the fees of the Saudi Real Estate Arbitration Center in the amount of SAR 1,900.

And since this dispute falls within the jurisdiction of this Circuit pursuant to Article 8 (1) of the Arbitration Law, as it concerns the fees of [...] Association.

And since the annulment action was filed within the statutory time limit stipulated in Article 51 (1) of the Arbitration Law.

[The action is thereby] admissible in form.

As to the merits, the Plaintiff seeks, through this action, the annulment of the award on the basis of the following reasons:

First: Article 50 (1) of the Arbitration Law, which permits annulment where a party is unable to present his defense due to improper notification or reasons beyond his control.

Second: Article 5 of the Procedural Rules of the Saudi Real Estate Arbitration Center, which requires that notifications be sent to the address provided by the party using means that produce written evidence of transmission.

Whereas the defendant argued that notification was effected through WhatsApp messages sent to the plaintiff's mobile number.

And whereas the plaintiff contested this, asserting that the number to which notification was sent is not his official number registered in Absher or with the Real Estate General Authority, and that he did not receive notification through the official channel.

Since the defendant's attorney failed to submit evidence demonstrating that the plaintiff was duly notified in accordance with Article 6 of the Arbitration Law, which provides:

(1) Unless otherwise agreed upon by the parties to arbitration regarding notifications, a written notice shall be delivered to the addressee personally, or to his designee, or to the mailing address specified in the contract subject of the dispute, in the arbitration agreement, or the document governing the relationship addressed by the arbitration.

(2) If the written notice cannot be delivered to the addressee according to paragraph (1) above, it shall be deemed to have been received if it is sent by registered mail to the addressee's last-known place of business, habitual residence, or known mailing address.

(3) The provisions of this Article shall not apply to judicial notifications relating to court proceedings with regard to nullification of the arbitration award.

And since no evidence was submitted showing that notification took place in accordance with Article 5 of the Procedural Rules of the Saudi Real Estate Arbitration Center published on the website of the Real Estate General Authority, which provides:

Correspondence from and to the Center shall be addressed to the Secretary General. Correspondence to the party shall be conducted through the Center's platform. Notification of correspondence and the documents attached thereto shall be deemed to have legal effect only upon delivery to the party by electronic means approved by the Center.

It is hereby established that proper notification to the plaintiff was not duly effected.

Pursuant to Article 50 of the Arbitration Law issued by Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H), which provides:

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

(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.

(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.

Ruling

The Circuit rules to annul the arbitral award dated 9/7/1446H, which ordered as follows:

First: Ordering the defendant to pay the amount of SAR 18,715 as fees of [...] Association.

Second: Ordering the defendant to pay arbitration fees, expenses, and the fees of the Saudi Real Estate Arbitration Center in the amount of SAR 1,900.

This ruling is subject to appeal before the Supreme Court within 30 days from the date of issuance, pursuant to Article 55 (3) of the Arbitration Law.