

Case 4530284026

Court	Circuit	Case No.	Judgment pronounced	Judgment issued
Eastern Province Court of Appeal	Civil	4530284026	–	October 9, 2023

Facts

The hearing was convened remotely via visual judicial communication (video conference). The plaintiff's attorney [the plaintiff was the claimant in the arbitration], [...], and the defendant's attorney [the defendant was the respondent in the arbitration], [...], appeared.¹

The plaintiff's attorney stated that he had prepared the statement of claim and submitted its text through the chat window of the virtual hearing, as follows:

With due appreciation and respect, and on behalf of our client [...], National ID No. [...], we hereby challenge the arbitral award issued by the arbitral tribunal, notwithstanding the withdrawal of one of its members [the arbitrator appointed by the plaintiff] and despite our client having abandoned his claim pursuant to Article 92 of the Law of Civil Procedure.

Article 92 provides that a plaintiff may abandon proceedings by notifying the opposing party, by a statement before the competent clerk of the court (or tribunal), or by an express declaration in a written submission signed by the claimant or his representative, provided that the opposing party is informed thereof, while retaining the underlying substantive right.

Accordingly, we have filed this annulment action pursuant to Article 50 of the Arbitration Law, which provides, inter alia:

(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.

(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

¹ Identifying information in this judgment has been redacted by the Ministry of Justice. 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.

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.

We now set out below the violations committed by the arbitral tribunal in light of the above provisions of Article 50, [thus constituting grounds for annulment of the arbitral award] as follows:

First: Failure of the tribunal to apply statutory rules

(1) Article 19 of Arbitration Law provides that:

If the mandate of an arbitrator expires due to his death, disqualification, dismissal, recusal, disability, or any other reason, a replacement shall be appointed according to the procedures followed in the appointment of the arbitrator whose mandate has expired.

Article 6 of the Implementing Regulations provides that:

If an arbitrator's mandate expires in the cases specified in Article 19 of the Law, except where such mandate expires due to disqualification, the arbitration proceedings shall be stayed until a replacement is appointed in accordance with the Law.

The wording of these provisions is clear and deprives the arbitral tribunal of the authority to proceed with the hearings or render an award [before a replacement arbitrator is appointed].

Attached is the withdrawal letter of the arbitral tribunal member [...], evidenced by his letter dated May 10, 2023. (See Exhibit No. 1: Arbitrator's Withdrawal Letter). On May 11, 2023, at 12:11 p.m., the tribunal sent a communication [to the withdrawing arbitrator], alleging that a deliberation had already taken place—of which the withdrawn member was unaware, in

which he did not participate, and to which he was not a party. (See Exhibit No. 2: Tribunal's Response to Arbitrator).

Thereafter, the tribunal rendered the award by majority decision and signed the arbitral award instrument, which lacks the formal structure ordinarily required for arbitral awards. It is noted that the alleged award instrument was neither issued nor delivered to the parties until May 15, 2023, despite dated as of an earlier date.

The award was thus rendered in violation of the requirements of Article 19 of the Arbitration Law, without the supervision of the competent court, and without the tribunal even recording the events relating to the tribunal member's withdrawal. Therefore, the award violates Article 50 (1) (d) of Arbitration Law and must be declared null and void.

(2) Article 92 of the Law of Civil Procedure stipulates that:

A claimant may abandon litigation by notifying his adversary, by a statement made before clerk of the competent court (or tribunal), or by an explicit statement in a memorandum signed by him or his attorney and made available to the opposing party.

On May 11, 2023, at 9:50 a.m., and following our receipt of the withdrawal of the arbitrator appointed by our client from the proceedings, we submitted a notice to the secretariat of the tribunal, giving notice of the discontinuance of the proceedings. (See Exhibit No. 3: Plaintiff's Communication to Tribunal).

Approximately 12 hours later, at 20:49 p.m., the tribunal responded to us, which indicates that we did not receive the response during working hours so as to be able to comment thereon or communicate with the tribunal. This likewise establishes before Your Excellency that the tribunal violated the statutory procedures provided by law.

We refer here to Articles 4, 25, and 38 of the Arbitration Law, which empower the arbitral tribunal, in the absence of agreement between the parties on specific procedures, to determine and apply the procedural rules relevant to the dispute.

It is evident that the parties did not agree on specific procedures, but rather agreed in general terms to apply the general procedural rules in force in the Kingdom of Saudi Arabia. Accordingly, the tribunal's assertion in its response

that the Law of Civil Procedure does not apply constitutes an incorrect and deficient understanding of the law.

(3) On 8/6/1444H, we submitted a request to the arbitral tribunal to hear the testimony of the witness [...], attached herewith. (See Exhibit No. 4: Request to the Tribunal). The presiding arbitrator, acting unilaterally and without deliberation or consultation with the other two members of the arbitral tribunal, issued an unwritten oral decision rejecting the request on the grounds that the witness was a former attorney.

It is noted that during the hearing held on February 6, 2023—the only virtual hearing convened by the arbitral tribunal, the minutes of which are attached herewith—the respondent’s attorney objected (p. 12) before the presiding arbitrator, stating that he had neither received the request nor been given the opportunity to respond, and was unaware of the substance of the proposed testimony. The presiding arbitrator responded (p. 13) that he had not transmitted the request to the other party because he considered it unproductive. (See Exhibit No. 5: Minutes of the Virtual Hearing).

There is no record indicating that the arbitral tribunal, as a panel, deliberated upon or decided this matter. This constitutes a clear violation of the procedural rules governing the arbitration.

Furthermore, on 19/7/1444H, we submitted a request to the arbitral tribunal to hear the testimony of the witness [...]. (See Exhibit No. 6: Plaintiff Request to Tribunal). This was a legitimate request that should have been referred to the full tribunal for determination as to admissibility. However, the decision was again made unilaterally by the presiding arbitrator, as evidenced herewith. (See Exhibit No. 7: WhatsApp Correspondence Dated April 4, 2023).

The presiding arbitrator scheduled a virtual hearing for the witness on April 5, 2023 at 09:40 p.m. and proceeded to hear and cross-examine the witness alone, without notifying either party. More seriously, he failed to notify the other two members of the arbitral tribunal, [...] and [...].

Accordingly, the presiding arbitrator acted independently and assumed decision-making authority reserved for the tribunal as a whole. This conduct constitutes a violation of the mandatory procedural rules governing arbitration proceedings and provides an additional ground for annulment of the award rendered by majority.

(4) On March 19, 2023, the presiding arbitrator, without the knowledge or participation of the other two tribunal members, contacted the management of [...], requesting responses to certain inquiries. (See Exhibit No. 8: Presiding Arbitrator's Communication to [...]). Upon receiving a response, he subsequently communicated with the other tribunal members and the parties on March 22, 2023. (See Exhibit No. 9: Presiding Arbitrator's Communication to Co-Arbitrators).

This conduct further demonstrates that the presiding arbitrator acted unilaterally in taking substantive procedural steps affecting the course of the proceedings, rather than through collective deliberation by the full tribunal.

Accordingly, these actions constitute additional grounds for the annulment of the arbitral award.

Second: The arbitral tribunal's decision on matters not covered by the arbitration agreement

On 6/9/1444H, the respondent's attorney submitted a memorandum to the arbitral tribunal. On page 2—under section "Fourth (2)"—he objected to the tribunal's expansion into matters not covered by the arbitration agreement, requesting that the tribunal confine its review to the claimant's claim for rescission of sale and refrain from addressing the claim for recovery of a gifted property [a chalet], so as to avoid ruling on matters not submitted by the parties.

Furthermore, on 22/8/1444H, the arbitral tribunal received a submission from one of its members, [...], who requested, at the conclusion of his submission, that the tribunal refrain from expanding its inquiry beyond its jurisdiction and mandate, and instead limit itself to the matter before it—namely, the alleged fictitious nature of the transaction—without addressing the issue of the gifted property or its recovery, stating: "This matter shall be left to the Court to examine in a separate action."

It is evident that the tribunal committed two violations:

First, a violation of Article 50 (1) (d) of the Arbitration Law, by excluding the application of rules agreed upon by the parties.

Second, a violation of Article 50 (1) (f), by ruling on matters not included in the arbitration agreement.

Accordingly, nullity is established on both grounds.

Moreover, based on the cumulative effect of the matters set out above, the tribunal's conduct also falls within Article 50 (1) (g) of the Arbitration Law, which provides for annulment where the tribunal fails to observe the conditions required for the award in a manner affecting its substance, or where the award is based on void proceedings. The tribunal's reliance on unilateral procedures and its failure to adhere to the formal requirements of the award have clearly affected its outcome.

Accordingly, we request the annulment of the arbitral award for the reasons set out above.

Third: The award contains matters contrary to the provisions of Sharia and public policy in the Kingdom

In its reasoning, the tribunal adopted the position that the true nature of the dispute between the claimant and the respondent was a gifted property from a parent to child, which the parent was entitled to revoke. The tribunal then proceeded to affirm the validity of the gift made by the father to the respondent, notwithstanding that we had not raised any dispute concerning the gift.

The tribunal further addressed the conditions for the validity of a gift and the requirement of possession. However, it subsequently relied on a document produced solely by the respondent to conclude that the gifted property had been transferred from the respondent to her mother, without applying the same conditions it had identified earlier in its examination of whether the mother's possession of the gift satisfied the conditions stipulated by the organization [...].

Instead, the tribunal concluded—without sufficient legal basis and without consideration of whether contractual and Sharia conditions had been satisfied—that the gift had transferred from the respondent's daughter to her mother [...] and had exited her [the mother's] ownership. Accordingly, the tribunal's decision constitutes a violation of established Sharia principles, which require that a gift is not valid unless the donee has taken possession of it.

Reference is made to the Ownership Contract No. [...] dated 26/5/1441H, executed by the respondent and signed by our client, which sets out the

governing terms and procedures for the transfer or waiver of ownership of the chalet.

Fourth: Jurisprudence does not distinguish between a sham sale and a sham gift

Among the Sharia violations committed by the tribunal is its failure to adjudicate the dispute concerning the sham nature of the transaction—whether characterized as a sale or a gift—and its improper treatment of the gift as a distinct and determinative issue.

As we have consistently submitted before the Court and the arbitral tribunal, the true subject matter of the dispute is the sham nature of the apparent sale reflected in the ownership contract and its annex (see Exhibit: Amended Ownership Contract No. [...]).

We have further clarified in our submissions that [...] does not, in principle, permit or recognize the transfer of private chalet contracts by way of gift, as such transfers require formal assignment procedures, including approval of the new contracting party and payment of prescribed administrative fees, given its status as an investment entity. Accordingly, one of the essential contractual conditions is obtaining approval for the identity of the incoming party and fulfilling the associated financial obligations.

We reiterate that we seek the annulment of the contract concluded with the respondent and the re-registration of the property in the name of our client on the basis of the sham nature of the ownership contract, regardless of whether the parties' intent at the time of execution was framed as a sale or a gift. In both cases, the operative issue remains the same—namely, the sham nature of the transaction. This position has been elaborated in detail, with reference to juristic and scholarly opinions, in our original submission before the Circuit.

Fifth: Statement of the withdrawing arbitrator

The attached exhibit consists of a statement by [...] [the withdrawing arbitrator], confirming the accuracy of the submissions we have presented before the Court in support of this annulment action. (See Exhibit No. 10: Statement of Withdrawing Arbitrator [...]).

Requests:

Your Honors, in light of the foregoing, it is evident that the presiding arbitrator has violated the provisions of Article 50 (1) of the Arbitration Law—specifically paragraphs d, f, and g—as well as Article 50 (2).

Accordingly, we respectfully request that the Court grant our application and order the annulment of the arbitral award.

Upon presentation of the foregoing, the defendant’s attorney responded as follows:

I am submitting my response via the chat window in this virtual hearing. The text is as follows:

I hereby submit to Your Honors this statement of defense in response to the action filed by [...] against my client [...], registered under No. [...], as follows:

As to form:

First:

The parties were notified of the arbitral award on 25/10/1444H. It appears from the system that the statement of claim for annulment was filed on 6/1/1445H, that is, after the expiry of the statutory period prescribed in Article 51 (1) of the Arbitration Law. Accordingly, my client requests that Your Honors declare the action inadmissible in form.

As to the merits:

Second:

The grounds stated in the statement of claim do not constitute valid grounds for annulment of the arbitral award, as they do not fall within the cases exhaustively enumerated in Article 50 (1) of the Arbitration Law. Rather, they amount to arguments on the than facts, which the plaintiff’s attorney seeks to reintroduce in order for the Court to reconsider the subject matter of the dispute, the evidence relied upon, and the procedures adopted by the arbitral tribunal.

Third:

As Your Honors are aware, the purpose of an annulment action is not to provide a second level of litigation or to resubmit the dispute for consideration. The plaintiff’s approach in this action constitutes a clear contravention of Article 50 (4) of the Arbitration Law, which 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.

Fourth:

In light of the foregoing, it is evident that this action is not based on any recognized ground under Sharia or statutory law. There is nothing in the arbitral award that violates the provisions of Islamic law or public policy. Accordingly, this action must be dismissed.

Fifth:

As for the allegations raised by the plaintiff's attorney concerning the withdrawal of a member of the arbitral tribunal or the plaintiff's abandonment of the claim prior to notification of the award – without prejudice to the various [procedural and substantive] deficiencies therein – these matters are left to the discretion of the Court, unless the Court specifically directs me to respond to them.

Requests:

Finally, I respectfully request that Your Honors declare the action inadmissible on procedural grounds. Alternatively, should the Court find that the action was filed within the statutory time limit, I request that it be dismissed on the merits and that the arbitral award be upheld for the reasons set out above.

Upon presentation of the foregoing to the plaintiff's attorney, he requested a grace period to prepare a reply. Accordingly, the hearing was adjourned.

At a subsequent hearing, both attorneys appeared, as recorded in the case file.

The plaintiff's attorney stated:

I hereby submit my reply to the defendant's statement of defense presented in the previous hearing, as follows:

Your Honors, the presiding judge and members of the Fifth Civil Circuit at the Eastern Province Court of Appeal, may Allah preserve you.

Peace, mercy, and blessings of Allah be upon you.

Subject: Reply to the statement of defense submitted by the defendant in Case No. [...] dated 10/8/1443H, referred to the Circuit by the Fifth Civil Circuit of

the Eastern Province Court of Appeal, between the claimant [...] and the respondent [...].

With all due appreciation and respect, and on behalf of our client [...], holder of National ID No. [...], we submit the following reply to the statement of defense filed by the defendant's attorney:

First:

The procedural defense (inadmissibility in form) is unfounded. On 17/12/1444H, that is, eight days before the expiry of the statutory period, we filed Action No. [...] before [...].

Second:

The respondent's attorney's assertion that the grounds set out in the statement of claim do not constitute valid bases for annulment is general and unsupported by legal reasoning. We have clearly detailed those grounds in the statement of claim, with express reference to Article 50 (1) of the Arbitration Law, namely the following provisions:

(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.

(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.

Third:

The present action heard by the Circuit does not concern a re-examination of the facts or merits of the dispute. Rather, it concerns procedural violations committed by the arbitral tribunal, including breaches of the agreed governing rules, the arbitration agreement, applicable law, and the principles of Sharia.

Fourth:

The issues relating to the withdrawal of a member of the arbitral tribunal and our client's abandonment of the proceedings are governed by law. These matters have already been addressed in detail in the annulment action, supported by the relevant legal provisions and documentary evidence, demonstrating the tribunal's violations.

Requests:

Your Honors, for the reasons and details set out in the statement of claim for annulment, we respectfully request that the Court accept the action and annul the defective arbitral award issued by the arbitral tribunal.

Upon presentation of the foregoing, the defendant's attorney stated:

I request to be granted time to prepare a reply.

The defendant was instructed to clarify the position of the arbitral tribunal regarding the alleged withdrawal of the plaintiff's appointed arbitrator. Accordingly, the hearing was adjourned.

At a subsequent hearing, the attorneys for both parties appeared.

[The defendant's attorney stated:]

My response to the submissions made by the plaintiff's attorney in the previous hearing is as follows:

I hereby submit to Your Honors this statement regarding the matter for which we were granted time. Following communication with the arbitral tribunal, we were informed of the following:

First:

On April 5, 2023 (14/9/1444H), the arbitral tribunal held the final deliberation session. Upon its conclusion, the presiding arbitrator requested each member to prepare a draft of the final award separately and to submit it to the tribunal's secretariat via email.

Second:

Seven days later, on April 12, 2023 (21/9/1444H), the secretariat received, via email, a draft arbitral award from arbitrator [...]. This is documented in the case file maintained by the tribunal's secretariat.

Third:

On the following day, April 13, 2023 (22/9/1444H), arbitrator [...] likewise submitted a draft award.

Fourth:

Thereafter, the presiding arbitrator prepared a draft award and circulated it to the tribunal members on May 8, 2023 (18/10/1444H).

Fifth:

Upon review, arbitrator [...] approved the draft award, while arbitrator [...] rejected it. Accordingly, the arbitral award was issued by majority on the same date. This refutes the plaintiff's attorney's contention that arbitrator [...] had withdrawn prior to the issuance of the award. Rather, it is established that his withdrawal—without legal effect—occurred two days after the award was issued, as acknowledged by the plaintiff's attorney in the "Fifth" ground [on the withdrawal of the arbitrator] of his statement of claim.

Sixth:

This confirms that the arbitrator's withdrawal occurred after the completion of all arbitration proceedings.

Seventh:

The foregoing is evidenced by the email titled "Minutes of the final deliberation of the arbitral tribunal," sent by the tribunal's secretary to the members on May 8, 2023 (18/10/1444H), at 11:41 a.m. (see Exhibit No. 1: Copy of Tribunal Secretary's Email).

Requests:

Based on the above, it is clear that this plea is unfounded and that the alleged withdrawal has no legal effect, as it occurred after the conclusion of the arbitration proceedings. Accordingly, it must be dismissed.

The defendant further added:

Today, I uploaded an exhibit in the “Requests” section of the case file consisting of the minutes of the final deliberation of the arbitral tribunal [i.e. Exhibit No. 1].

Upon presentation to the plaintiff, he stated:

I request to be granted time to consult with arbitrator [...] regarding what was stated by the defendant’s attorney. Furthermore, I uploaded yesterday, under the “Requests” section of the case file, a submission, the text of which is as follows:

Your Honors, the presiding judge and members of the Fifth Civil Circuit at the Eastern Province Court of Appeal, may Allah preserve you.

Peace, mercy, and blessings of Allah be upon you.

Subject: Statement regarding the withdrawal of a member of the arbitral tribunal in Case No. [...], dated 10/8/1443H, referred to the panel by the Fifth Civil Circuit at the Eastern Province Court of Appeal

With all due respect and appreciation, and on behalf of our client [...], holder of National ID No. [...], and in response to the Circuit’s inquiry at the previous hearing concerning the correspondence exchanged between the arbitral tribunal and the withdrawing member [...], we attach hereto a copy of the arbitrator’s withdrawal letter, dated May 10, 2023, and sent to the arbitral tribunal at 14:15 p.m. (See Exhibit No. 1: Arbitrator’s Withdrawal Letter).

The second piece of evidence consists of the response of the secretary of the arbitral tribunal to the arbitrator on the following day, May 11, 2023, at 12:11 p.m. (See Exhibit No. 2: Tribunal’s Response to Arbitrator). The letter includes several matters affecting the award, namely:

First: The letter states “further to the completion of the deliberations,” which indicates that no deliberation hearing was held for the issuance of the award or for the closure of pleadings.

Second: The arbitral tribunal’s letter on May 11 was its first response to the withdrawal letter sent on May 10; however, the tribunal dated the award with an earlier date, namely May 10.

Third: The parties did not submit closing submissions.

Fourth: No in-person hearing was held between the parties and the arbitral tribunal for the pronouncement of the award.

Fifth: The award instrument did not refer to the arbitrator's withdrawal letter nor state the reason for his failure to sign it.

Sixth: The award did not refer to our request for discontinuance of the proceedings pursuant to Article 92 of the Law of Civil Procedure in the arbitration case, nor did it address the tribunal's response thereto.

Seventh: The award instrument did not refer to the arbitral tribunal's reversal of its decision to hear our client's witnesses pursuant to an individual decision issued by the presiding arbitrator.

Your Honors,

Article 19 of Arbitration Law provides that:

If the mandate of an arbitrator expires due to his death, disqualification, dismissal, recusal, disability, or any other reason, a replacement shall be appointed according to the procedures followed in the appointment of the arbitrator whose mandate has expired.

Article 6 of the Implementing Regulations provides that:

If an arbitrator's mandate expires in the cases specified in Article 19 of the Law, except where such mandate expires due to disqualification, the arbitration proceedings shall be stayed until a replacement is appointed in accordance with the Law.

Requests:

For the reasons and details previously set out in the statement of claim for annulment, we request that it be accepted and that the defective award be annulled for the reasons stated therein.

At this point, the hearing was adjourned to allow the plaintiff to submit the reply for which he had requested time. [The reply reads as follows:]

Your Honors, the presiding judge and members of the Fifth Civil Circuit at the Eastern Province Court of Appeal, may Allah preserve you.

Peace, mercy, and blessings of Allah be upon you.

Subject: Statement regarding the reply of the respondent in the arbitration concerning the withdrawal of a member of the arbitral tribunal in Case No. [...], dated 10/8/1443H, referred to the arbitral tribunal by the Fifth Civil Circuit at the Eastern Province Court of Appeal

With all due appreciation and respect, and on behalf of our client [...], holder of National ID No. [...], and in response to the Circuit's inquiry at the previous hearing concerning the correspondence exchanged between the arbitral tribunal and the withdrawing member [...], and in reply to the submission made by the defendant at today's hearing dated 14/2/1445H, we submit that Your Honors will find our comments thereon in the attached submission together with its exhibits. We respectfully request Your Honors to review and accept the same.

The Circuit reviewed the submission and its exhibits under the "Requests" section in the case file. In it, the defendant stated:

I have reviewed the plaintiff's submission and have filed a reply thereto in a submission under the "Requests" section in the system, the text of which is as follows:

I hereby submit to Your Honors this statement of defense in reply to the response submission filed by the plaintiff's attorney and deposited under the "Case Requests" section on the Najiz electronic portal on 21/2/1445H, as follows:

First:

My client maintains her request for a ruling of inadmissibility of the case on procedural grounds, which we previously submitted together with its supporting reasons in our first response to the statement of claim.

Second: In reply to the submission of the plaintiff's attorney

(1) The denial made by the plaintiff's attorney in paragraph 1 regarding the issuance of the arbitral award on 18/10/1444H is incorrect. It is established (as explained in my previous submission) that the secretary requested the members of the arbitral tribunal to circulate a "proposed award" among themselves, which was duly carried out. Consequently, the arbitral tribunal applied Article 39 (1) of the Arbitration Law during its consideration of the proceedings.

(2) Arbitrator [...] approved the proposal of the presiding arbitrator, as evidenced by the issuance of the arbitral award by a majority of the members. I attach for Your Honors further evidence: an email from the secretary to the members of the arbitral tribunal containing the “Minutes of the final deliberation of the arbitral tribunal” dated May 8, 2023 (18/10/1444H), on which date the award was issued (see Exhibit No. 1: Copy of Tribunal Secretary’s Email).² A copy of the same minutes enclosed with the email is also provided (see Exhibit No. 2: Minutes of Tribunal’s Final Deliberation). Therefore, the submission of the plaintiff’s attorney that the withdrawal of arbitrator [...] occurred before the issuance of the award is unfounded, as we have demonstrated the inaccuracy of that allegation.

(3) It is clear from the foregoing that the arbitral award was issued after arbitrator [...] became aware of arbitrator [...]’s approval of the proposed award submitted by the presiding arbitrator, that it was issued by majority, and that this occurred two days prior to his withdrawal, which has no legal effect on the award.

(4) As for the repeated allegation that the presiding arbitrator violated the applicable regulations, it is merely an unsubstantiated assertion unsupported by any evidence.

(5) Regarding his reliance on Article 13 of the Arbitration Law, this reliance is misplaced and without a sound legal basis.³ It is established from the emails attached to my statement of defense submitted in the previous hearing, and as explained above, that the arbitral award was issued by a majority of the members.

(6) As for his reliance on Article 39 (1) of the same law, this is precisely what occurred among the members of the arbitral tribunal; the issuance of the award was preceded by deliberations conducted between the members, as evidenced by the exhibit referred to above.⁴

² The exhibit numbering begins afresh in each pleading brief and does not continue sequentially across briefs.

³ The plaintiff’s statements do not refer to Article 13. The SCCA team has been unable to clarify this apparent discrepancy.

⁴ The plaintiff’s statements do not refer to Article 39 (1). The SCCA team has been unable to clarify this apparent discrepancy.

(7) Concerning the reliance on Article 39 (2) of the same law, this argument has already been addressed above and is unfounded.

(8) Concerning what was stated in paragraph 7, this allegation—even if proven—does not constitute a ground for annulment of the award.⁵ Article 50 of the Arbitration Law exhaustively enumerates the grounds for annulment, and this allegation does not fall within any of them.

(9) With respect to paragraph 8, we have already clarified to in the previous statement of defense that the withdrawal occurred two days after the conclusion of all arbitral proceedings; therefore, it does not affect the award, and there is nothing in this withdrawal that warrants the annulment of the award.⁶

Requests:

Accordingly, I request Your Honors to rule that the case is inadmissible on procedural grounds. Should the Circuit find that the action was filed within the statutory deadline, it is evident from the defenses submitted and the evidence on record that this action is not based on any valid ground for annulment. There is nothing in the arbitral award that constitutes a violation of the provisions of Sharia or public policy. Therefore, I request that the action be dismissed and that the arbitral award be upheld for the reasons set out above.

In response, the plaintiff stated:

In response to the respondent's statements, we emphasize the inaccuracy of the defendant's attorney's claim that the award was issued on 18/10/1444H. What was sent consisted of three divergent proposals to the tribunal members, each advancing a different position. A confidential deliberation hearing should have been held pursuant to Article 39 (1) of the Arbitration Law to weigh and adopt one of the opinions; however, this did not occur, as no such hearing was convened. Instead, a meeting was held between the presiding arbitrator and arbitrator [...] only, in violation of Article 13.

⁵ The defendant likely refers to a different paragraph 7 from the only paragraph numbered 7 in the plaintiff's statement. The SCCA team has been unable to clarify this apparent discrepancy.

⁶ The plaintiff's statements do not contain a paragraph numbered 8. The SCCA team has been unable to clarify this apparent discrepancy.

We further submit that, pursuant to Article 33 of the Arbitration Law, which provides that parties must be given sufficient advance notice at the addresses provided to the arbitral tribunal of the date of pronouncement of the award, no such notice was given. This procedure should have been preceded by steps including a determination of the sufficiency of submissions and the formal closure of proceedings. The omission of these steps prejudiced the claimant's right of defense by preventing the submission of a final closing argument.

Furthermore, Article 50 (d) of the Arbitration Law provides that a ground for annulment arises where the arbitral award excludes the application of the rules agreed upon by the parties. Among the agreed rules in this arbitration was the application of the Arbitration Law itself and the relevant procedural regulations.

In reply, the defendant stated:

I request that I be granted time until the next hearing to submit a response to the new allegations raised by the plaintiff in this hearing.

The plaintiff rejoined:

I wish to respond to what the defendant will submit, and I request that he provide his submission sufficiently in advance of the next hearing so that I may prepare a reply.

Both parties were instructed to submit all remaining arguments at the next hearing. The present hearing was accordingly adjourned.

At a subsequent hearing, the legal counsel of both parties attended.

The defendant's attorney stated:

I was unable to submit my submission through the "Requests" section, and I am submitting it now through the chat window of this virtual hearing. Its text is as follows:

I submit this statement of defense in response to what the plaintiff's attorney stated at the previous hearing dated 22/2/1445H, as follows:

First:

The plaintiff's attorney alleged that the arbitral tribunal did not hold a confidential deliberation hearing, thereby violating—as he claims—Article 39 (1) of the Arbitration Law. I respond as follows:

(1) This allegation is incorrect. The members had previously deliberated and exchanged views, and each member submitted a proposed award. Arbitrator [...] approved the presiding arbitrator's proposal, and the arbitral award was issued by majority. We have submitted evidence of this throughout the pleadings in this case.

(2) Furthermore, even if it were assumed that such a hearing was not held—which is incorrect—this does not constitute a ground for the annulment of the arbitral award.

Second:

As for the other allegation raised by the plaintiff's attorney, namely the failure to notify both parties to the arbitration of the date set for pronouncement of the award, I respond as follows:

(1) The failure of notification—even if assumed—does not constitute a ground for annulment of the arbitral award.

(2) With respect to Article 50 (d) of the Arbitration Law, upon which the plaintiff's attorney relied, it provides as follows:

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.

There is a clear distinction between an agreement by the parties on specific statutory rules and arbitral tribunal's application of the Arbitration Law and its Implementing Regulations in the course of the proceedings.

(3) Moreover—and this is the essential point—my client denies having agreed with the plaintiff on the application of any specific statutory rules. The plaintiff's attorney has failed to provide any evidence establishing such an agreement, despite alleging that the arbitral tribunal violated them.

In conclusion, it is evident that this reliance is incorrect and lacks a sound legal basis. The plaintiff's attorney has failed, despite numerous hearings, to establish any of the grounds for annulment. Accordingly, my client requests that the relief sought, as recorded in the minutes of the hearing dated 22/1/1445H, be granted.

The plaintiff's attorney stated:

I request a grace period to reply to the defendant's attorney's submission.

Both parties were instructed to submit all remaining arguments through the system before the next hearing.

The plaintiff's attorney stated:

I have submitted everything I have, but the defendant's last reply necessitated a rebuttal.

The defendant's attorney stated:

I have also submitted everything I have, but if the plaintiff's attorney raises anything in his requested rebuttal that requires a response, I shall respond.

Having stated thus, both parties were informed that they will be notified of the next hearing date in accordance with the litigation system. Consequently, the hearing was adjourned.

At a subsequent hearing, the attorneys for both parties attended.

The plaintiff's attorney stated:

I was unable to submit my submission through the system due to a technical issue; I have sent it to the Circuit's email address and provided a copy to the defendant's attorney.

Accordingly, and the text of my submission, as recorded in the chat window of this virtual hearing, is as follows:

First:

The attempt by the defendant's attorney to distinguish between the arbitral tribunal's application of the arbitration agreement (stipulated in Article 15 of Agreement No. 014/1 dated 26/5/1441H)—which provides for recourse to arbitration in accordance with the Arbitration Law—and the application of all provisions of that law unless specifically excepted is a futile attempt.

We are not bound by his interpretation. It should be noted that our statement of defense relied on the provisions of the Arbitration Law in application of Article 50 (1) (d), which provides for annulment where the arbitral award excludes the application of rules agreed by the parties to govern the dispute.

Furthermore, Article 50 (2) stipulates that the competent court shall, on its own initiative, annul the award if it violates the provisions of Sharia or public order in the Kingdom. This aligns with the minutes of the first hearing, which

stipulated that arbitration shall be conducted in accordance with Sharia and applicable laws. Undeniably, the Arbitration Law itself forms part of the agreed applicable law.

Second:

As previously clarified, the arbitral tribunal's secretariat responded to the request of arbitrator [...] on May 11, 2023 (21/10/1444H), at 12:11 p.m., stating "further to the completion of the deliberations." This confirms that no final deliberation hearing or formal closure of proceedings took place prior to May 11; rather, it indicates that deliberations (if any) were incomplete.

By way of clarification, all arbitrators must participate in the deliberation preceding issuance of the award. Deliberation is a fundamental procedural requirement and a core judicial principle; its omission renders the arbitral award subject to annulment as a matter of public policy. It is impermissible for each member to submit a separate opinion for the presiding arbitrator to select from or to issue the award by majority without proper deliberation, nor may the presiding arbitrator decide unilaterally, as occurred here, in the event of dissenting opinions.

Deliberation requires genuine discussion and exchange of views regarding the evidence in the case file in order to reach a reasoned decision. Even where a majority suffices, deliberation cannot be conducted in isolation; participation is a right of all members, including any dissenting arbitrator.

Notably, the arbitral tribunal's letter to arbitrator [...]—referring "further to the completion of the deliberations"—was its first response to the withdrawal letter dated May 10. This indicates that, as of May 10, 2023 (20/10/1444H), the award had not in fact been issued and no hearing was held on that day. The arbitrator [...] was only notified of the award's issuance by the tribunal's letter on May 11, notwithstanding that the award was backdated to May 10.

We hereby reiterate our submission made at the hearing on 22/2/1445H concerning Article 39 (1) of the Arbitration Law on confidential deliberations prior to the pronouncement of the award.

Third:

The contention of the defendant's attorney regarding the interpretation of Article 50 (1) (d) and its relation to deliberation and notification is a personal interpretation that does not require a response from our side.

Fourth:

Exhibit No. 1, the letter addressed to us by the presiding arbitrator dated May 11, 2023 (21/10/1444H), in response to our request submitted pursuant to Article 92 of the Law of Civil Procedure to abandon the proceedings, states at the end of page 2 the following clear statement:⁷

We have instructed the secretariat of the arbitral tribunal to notify your client, the claimant, and to formally notify the respondent of the award previously issued by us by majority in their dispute.

This demonstrates that we were not previously notified of any hearing scheduled for the pronouncement of the award, as mandatorily required by Article 33 (1) of the Arbitration Law, which provides:

The two parties to arbitration shall be given sufficient advance notice at the addresses they provided to the Arbitral Tribunal of the date of any hearing and award pronouncement.⁸

It is also to be noted that the presiding arbitrator sent Exhibit No. 1 by email on Thursday [May 11, 2023] at 20:49, as evidenced by Exhibit No. 2, at a time when no one was present in the office. He was fully aware that the following day, Friday [May 12, 2023], was an official holiday, and that his letter would not be received until Saturday, May 13, 2023 (23/10/1444H).

Furthermore, it is evident that the arbitral tribunal violated Article 42 (1) of the Arbitration Law, which provides:

In case of multiple arbitrators, the signatures of the majority of arbitrators shall be sufficient, provided that grounds for the lack of signatures of the minority be recorded in the minutes.

The signing of the arbitral award by the arbitrators—whether by majority or unanimously—is a mandatory requirement for the validity of the award.

⁷ The exhibit numbering begins afresh in each pleading brief and does not continue sequentially across briefs.

⁸ The correct reference is Article 33 (2) of the Arbitration Law.

Failing this, the award is null and devoid of any legal effect. Article 42 (1) expressly requires that the arbitrator to sign the award, and where any arbitrator refuses to sign, the reasons must be recorded in the hearing minutes. This did not occur, as there were no deliberation minutes in the first place, given that no session was convened.

It is therefore apparent that arbitrator [...] did not sign the award, no reasons were recorded for his failure to sign, and the tribunal failed even to refer to his request to withdraw from membership of the tribunal.

Your Honors,

Based on the above, it is established that the parties did not submit their closing submissions, nor was a hearing scheduled for that purpose. It is further established that no in-person hearing was held for the parties and the arbitral tribunal to pronounce the award.

Moreover, the award instrument contains no reference to the arbitrator's withdrawal letter or to the reason for his failure to sign. It also omits any mention of our request for discontinuance of the proceedings pursuant to Article 92 of the Law of Civil Procedure in the arbitration case, as well as the arbitral tribunal's response thereto.

Additionally, the award does not refer to the arbitral tribunal's decision to refrain from hearing our client's witnesses [...] and [...], which was made pursuant to a unilateral decision by the presiding arbitrator and was not recorded in the tribunal's minutes.

This constitutes a clear violation of Article 19 of the Arbitration Law, which provides:

If the mandate of an arbitrator expires due to his death, disqualification, dismissal, recusal, disability, or any other reason, a replacement shall be appointed according to the procedures followed in the appointment of the arbitrator whose mandate has expired.

Reasoning

Based on the foregoing, and after examining the application and the documents attached thereto, and given that the award subject of the annulment action was issued on 20/10/1444H and that the plaintiff received a copy on 25/10/1444H, according to both parties'

acknowledgement in the hearings, and that the plaintiff submitted this application on 17/12/1444H—as evidenced by the judicial referral field in the case file, that is, within 60 days from the date of notification of the arbitral award—the action is admissible in form pursuant to Article 51 (1) of the Arbitration Law.

As to the merits of the annulment action, the plaintiff’s request raises several matters, of which two are material.

First, the plaintiff alleges that the arbitral tribunal committed an error in characterizing the main subject matter of the dispute as the gifted property, which the plaintiff argues violates the principles of Sharia. However, the Court does not find this claim to be valid.

Second, the plaintiff argues that the withdrawal of the arbitrator appointed by the plaintiff and the subsequent rendering of the award by following said withdrawal contravenes Article 19 of the Arbitration Law and justifies annulment of the award under Article 50 (1) (d).

It has become evident to the Court that the award was issued by an arbitral tribunal lacking the quorum of members originally constituted to hear the dispute, following the withdrawal of member [...]. Consequently, the award was issued in violation of the parties’ agreement as to the composition of the arbitral tribunal, which consisted of a presiding arbitrator and two co-arbitrators.

Accordingly, the award falls within the cases specified in Article 50 of the Arbitration Law, which exhaustively sets out the grounds for annulment, as follows:

- (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.

Furthermore, the arbitral award excluded the application of the legal rules agreed upon by the parties, including the requirement that the award be issued by the arbitral tribunal in its full agreed composition, as reflected in Article 51 (d), (e), and (g).

In addition, the award lacked the signature of the third arbitrator, and no reasons were recorded for the absence of the minority's signature. This is contrary to Article 42 (1), which provides:

The arbitration award shall be made in writing and shall be reasoned and signed by the arbitrators. In case of multiple arbitrators, the signatures of the majority of arbitrators shall be sufficient, provided that grounds for the lack of signatures of the minority be recorded in the minutes.

Accordingly, the Court concludes as follows.

Ruling

The Court hereby rules to annul the arbitral award issued on 20/10/1444H by the arbitral tribunal referred to in this action, in relation to the arbitration dispute arising from Case No. [...] dated June 21, 2021 (11/11/1442H), in Case No. [...] dated August 15, 2022 (17/1/1444H), in the arbitration claim filed by [...] against [...], for the reasons set out above.