

Case 4630656012

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Jeddah Court of Appeal	General	4630656012	–	January 16, 2025

Facts¹

Based on the transaction registered with this Court under No. [...] on August 1, 2024 (26/1/1446H), submitted by the plaintiff, [...] [the claimant in the arbitration] (National ID No. [...]), against the defendant, [...] [the respondent in the arbitration] (National ID No. [...]), concerning an action for annulment of an arbitral award with respect to the award issued by the arbitral tribunal comprising the arbitrator and lawyer [...] as presiding arbitrator and the arbitrators [...] and [...] as members, in the arbitration case in which the arbitral award . . . was issued, which concluded as follows:²

Accordingly, the arbitral tribunal rules by majority as follows:

First: The claim of the claimant, [...] (National ID No. [...]), against the respondent, [...] (National ID No. [...]), is dismissed for the reasons stated.

Second: All other requests from both parties are dismissed.

This session was opened, attended by the attorney for the plaintiff, [...], and the attorney for the defendant, [...].

When asked about his claim, the plaintiff's attorney submitted the statement of claim for the annulment action with the following requests and grounds:

We submit to Your Honors in this action an application for annulment of the arbitral award issued . . . by the arbitral tribunal comprising the presiding arbitrator, [...], of Saudi nationality, Civil Registry No. [...]; the first member, [...], of Saudi nationality, Civil Registry No. [...]; and the second member, [...], of Saudi nationality, Civil Registry No. [...] (Exhibit No. 1: Arbitral Tribunal's Award).

1 This is an unofficial English translation of the judgment from Arabic, prepared by the SCCA team.

2 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.

Plaintiff seeking annulment of the arbitral tribunal's award: [...], of Saudi nationality, Civil Registry No. [...], resident in Jeddah Governorate, represented in filing this action by his attorney, the lawyer [...], of Saudi nationality, Civil Registry No. [...], resident in the city of Riyadh, licensed to practice law by the Ministry of Justice pursuant to Law License No. [...] dated May 15, 2022 (14/10/1443H) and pursuant to Power of Attorney No. [...] dated April 28, 2024 (9/10/1445H) (Exhibit No. 2: Copy of ID, License, and Power of Attorney).

Defendant: [...], of Saudi nationality, Civil Registry No. [...], resident in Jeddah Governorate.

Arbitration agreement (basis for formation of the tribunal): The arbitral tribunal was formed based on the arbitration clause set out in Clause 13 of the contract concluded on March 9, 2009 (12/3/1430H), which provides (Exhibit No. 3: Copy of Contract):

As a first option in the event that any dispute arises, God forbid, regarding the interpretation or application of this contract, it shall be settled amicably and the dispute shall be resolved in accordance with the Arbitration Law in force in the Kingdom of Saudi Arabia. If no resolution is reached after all methods and solutions have been exhausted and non-compliance warnings have been issued, the dispute shall be referred to the Greater Sharia Courts in Jeddah for consideration and adjudication.

The operative part of the arbitral tribunal's award reads:

Accordingly, the arbitral tribunal rules by majority as follows:

First: The claim of the claimant, [...] (National ID No. [...]), against the respondent, [...] (National ID No. [...]), is dismissed for the reasons stated.

Second: All other requests from both parties are dismissed.

[The reasoning for the award given by the tribunal is as follows:]

The claimant seeks rent that fell due on March 7, 2014 (6/5/1435H).

Article 2 of the Law of Civil Transactions provides that the periods and time limits provided for in that law shall be calculated according to the Hijri calendar, and Article 302 of the same law provides: "The statute of limitations shall be suspended in the following cases: . . . b) If the claim is

filed before a judicial body, even if such body is a court lacking jurisdiction.”

There was a prior judicial claim between the parties in Case No. [...] of April 26, 2010 (12/5/1431H) before the General Court in Jeddah Governorate, in which Instrument No. [...] dated June 3, 2014 (5/8/1435H) was issued with a ruling to dismiss the plaintiff’s lawsuit against the defendant due to lack of jurisdiction.

Article 304 (1) of the Law of Civil Transactions provides: “If the statute of limitations is suspended, a new statute of limitations the period of which is equal to the original one shall commence from the time the effect of the cause of suspension terminates.”

The last procedure that interrupted the statute of limitations occurred on June 3, 2014 (5/8/1435H), whereupon a new period of similar duration to the original five-year period commenced, ending on April 10, 2019 (5/8/1440H).

Whereas the claimant resorted to arbitration, and the arbitral proceedings were commenced on November 29, 2023 (15/5/1445H), the first plea submitted by the respondent’s attorney, namely inadmissibility of the claim due to lapse of the statute of limitations and prescription, is consistent with statute, and the tribunal rules accordingly, as will appear in the operative part.

Moreover, the tribunal sees no cause to discuss the other pleas submitted by the respondent’s attorney, as it finds itself bound by statute to dismiss the claim without hearing it.

Pursuant to Article 42 (1) of the Arbitration Law, Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H); as for the claimant’s request that the respondent be ordered to pay him the costs for formation of the arbitral tribunal in the amount of SAR 140,000 (one hundred forty thousand Saudi riyals) and that the respondent be ordered to pay him compensation for lawyer fees amounting to 10 percent of the awarded amount; and as the tribunal did not grant any of the claimant’s requests and ruled his claim inadmissible, the claimant shall bear the arbitration costs and lawyers fees as the losing party.

Accordingly, the tribunal concludes that the claimant’s request to order the respondent to pay arbitration costs and lawyer fees is inadmissible, as will

appear in the operative part of the award. As for all other requests of both parties, the arbitral tribunal concludes by rejecting those requests, as will appear in the operative part of its award.

Admissibility of the action as to form:

We rely on Article 49 of the Saudi Arbitration Law, Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H), which provides, "Arbitration awards rendered in accordance with the provisions of this Law are not subject to any form of appeal, except for an action to nullify an arbitration award filed in accordance with the provisions of this Law."

We also rely on Article 51 (1) of [the same law], which provides, "An action for nullification of the arbitration award shall be filed by either party within 60 days following the date of notification of said party of the award; and such action is admissible even if the party invoking nullification waives his right to do so prior to the issuance of the arbitration award."

As the arbitral tribunal award was received on June 6, 2024 (29/11/1445H), and we filed this action for annulment of the arbitral award on July 31, 2024 (25/1/1446H), the action is therefore admissible in form.

Admissibility of the action as to the merits:

We base this action for annulment of the arbitral award on the circumstances provided for in Article 50 of the Saudi Arbitration Law, which will be set out clearly as follows:

First:

We rely on Article 50 (1) (a) and (d) 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.

...

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.

We clarify to Your Honors the following: The arbitral tribunal exceeded its authority in its award (in ruling on the subject matter of the dispute), when the arbitration clause upon which formation of the tribunal was based expressly provides that arbitration is a first option for amicable settlement, and that in the event such settlement is not achieved, recourse shall be to the Sharia courts.

Specifically, Clause 13 of the contract concluded on March 9, 2009 (12/3/1430H), provides:

As a first option in the event that any dispute arises, God forbid, regarding the interpretation or application of this contract, it shall be settled amicably and the dispute shall be resolved in accordance with the Arbitration Law in force in the Kingdom of Saudi Arabia. If no resolution is reached after all methods and solutions have been exhausted and non-compliance warnings have been issued, the dispute shall be referred to the Greater Sharia Courts in Jeddah for consideration and adjudication.

Accordingly, the arbitral tribunal, in its award, overstepped the very clause upon which it relied in its award, thereby violating the express provisions of statute.

Second:

We rely on Article 50 (2) of the Arbitration Law, which provides:

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

We clarify to Your Honors the following:

(1) The arbitral tribunal based its award (dismissing the claim) on limitation barring hearing of the claim, relying on Article 296 (b) of the Law of Civil Transactions, but the approach adopted by the arbitral tribunal is not consistent with that provision; it applied the statutory provisions relating to limitation in a manner contrary to item "Fifth," paragraph (2), of Royal Decree No. M/191 dated June 18, 2023 (29/11/1444H) promulgating the Law of Civil Transactions, which provides:

The provisions of the Law of Civil Transactions shall apply to all events that occurred prior to its entry into force, except for the following: . . .

2) If the ruling relates to the lapse of a statute of limitations that began running prior to entry into force of this Law.

The event that is the subject of the arbitration claim began running prior to issuance of this law and its entry into force. Accordingly, my client's claim falls within the exceptions stated in the preamble of this law.

(2) In its application of provisions relating to the statute of limitations in a case wherein the proceedings commenced prior to entry into force of the law, the arbitral tribunal violated Article 302 of the Law of Civil Transactions, which provides: "The statute of limitations shall be suspended in the following cases: . . . c) If the creditor initiates any other judicial proceeding to assert his right."

My client initiated the proceedings and requested formation of an arbitral tribunal in his capacity as claimant by filing a claim under No. [...] of October 12, 2023 (27/3/1445H) before the First Civil Circuit of the Jeddah Governorate Court of Appeal, seeking to compel the respondent to appoint an arbitrator.

Thereafter, communication was received from the respondent, who appointed an arbitrator on his part. The arbitral tribunal was formed on November 29, 2023 (15/5/1445H), the first session before the arbitral tribunal was held on December 4, 2023 (20/5/1445H), and the written claim was submitted on December 7, 2023 (23/5/1445H).

All of the foregoing occurred prior to entry into force of the Law of Civil Transactions on December 17, 2023 (4/6/1445H). This makes it clear that the procedures taken prior to entry into force of this law interrupted limitation (assuming it were applicable in the first place). We also maintain our position stated under item (1) [above] that limitation does not apply to the subject matter of this claim.

Your Honors, in light of what is clear to you regarding the arbitral tribunal's violation of statutory provisions as set forth above, and regarding its having decided the dispute instead of limiting its function to reaching a settlement or amicable resolution between the parties, and then issuing a ruling dismissing claim in violation of express provisions of statute and thereby depriving my client of his rights, we respectfully request that Your Honors rule as follows:

Rule to annul the arbitral award issued . . .

He stated that he was unable to upload his brief via case requests due to a technological malfunction and that he had contacted the technicians in this regard. He was provided with the User Services email address.

Upon presentation thereof to the defendant's attorney, he requested time to respond and likewise stated that there was a technological malfunction that prevented uploading his response. He was given the same instruction as the plaintiff's attorney.

In another session attended by the attorney for the plaintiff, [...], and the attorney for the defendant, [...], the defendant's attorney was asked about his response for which he had been granted time, and he presented a written response, stating as follows:

I submit this answer to the statement of claim for annulment of the arbitral award, drafted and submitted by the plaintiff in the previous session held on Tuesday, August 13, 2024 (9/2/1446H). To start, I reject it outright. I summarize my answer as follows:

First: In response to section "First" of the [plaintiff's] petition

The plaintiff relied on Article 50 (1) (a) and (d) of the Arbitration Law, alleging that the arbitral tribunal exceeded its authority by ruling on the subject matter of the dispute and exceeded the arbitration clause, and alleging that its role was amicable resolution only. This is entirely incorrect, and I reject it for the following reasons:

(1) Article 50 (1) (a) of the Arbitration Law is irrelevant to the plaintiff's allegation of excess or overreach by the arbitral tribunal, as this subparagraph addresses annulment where the arbitration agreement is absent, void, voidable, or has lapsed upon expiry of its term. Therefore, reliance on this subparagraph to seek annulment of the arbitral award is incorrect.

(2) Article 50 (1) (d) of the Arbitration Law is also irrelevant to the plaintiff's allegation of excess or overreach by the arbitral tribunal, as this subparagraph addresses the arbitral award's exclusion of application of statutory rules agreed upon by the parties. Accordingly, reliance on this paragraph to seek annulment of the arbitral award is incorrect.

(3) I would like to inform you of the existence of a subsequent arbitration agreement dated December 4, 2023 (20/5/1445H), specifically an arbitration submission agreement subsequent to the dispute, represented in the minutes of the first procedural session. It names the parties, their attorneys, and the members and secretary of the arbitral tribunal, specifies the tribunal's and

secretary's functions, identifies the applicable law, determines the arbitration procedures, sets the tribunal's fees, and determines of the seat of arbitration.

Article 1 (1) of the Arbitration Law permits this and provides that the arbitration agreement may be either prior to or subsequent to the dispute through a submission agreement.

Furthermore, paragraph (1), under the heading "Fourth: Functions of the Arbitral Tribunal and the Secretary" on page 2 of the minutes and submission agreement, states, "The arbitral tribunal shall adjudicate between the parties and issue decisions and rule on the parties' requests in accordance with the applicable law, which will be referred to below, and may conduct accounting or appoint experts and the like when necessary" (Exhibit No. 1: Minutes of the First Procedural Session, Constituting the Submission Agreement).

(4) The subsequent arbitration agreement represented in the submission agreement dated December 4, 2023 (20/5/1445H) and all minutes of the arbitral tribunal's sessions are signed by the attorney for the plaintiff, who is the same person appearing in this case and who submitted the annulment action in the previous session on Tuesday, August 13, 2024 (9/2/1446H). Therefore, his challenge alleging excess or overreach by the arbitral tribunal is refuted and invalid. Rule 40 of Article 720 of the Law of Civil Transactions dictates: "A person who attempts to renege on a matter shall be estopped."

(5) The plaintiff did not raise before the arbitral tribunal a plea of lack of jurisdiction to decide in the subject matter of the dispute on the basis that the arbitration agreement did not empower it to decide and that its role was limited to amicable resolution, as he alleges. This constitutes a violation of the Arbitration Law and results in forfeiture of his right to raise such a plea pursuant to Article 20 of the Arbitration Law.

Second: In response to section "Second" of the [plaintiff's] petition

The plaintiff relied on Article 50 (2) of the Arbitration Law, alleging that the arbitral award violated item "Fifth," paragraph (2), of Royal Decree No. M/191 dated June 18, 2023 (29/11/1444H) [promulgating the Law of Civil Transactions], because the arbitral tribunal applied the statutory provisions relating to limitation in a manner contrary to the Royal Decree, which has the effect of excluding the arbitration claim from limitation, while also asserting that limitation does not apply to the arbitration claim.

In addition, he alleged that the arbitral tribunal violated Article 302 of the Law of Civil Transactions regarding interruption of limitation and that the arbitration claim preceded the entry into force of the Law of Civil Transactions on December 17, 2023 (4/6/1445H).

I state that this is entirely incorrect, and I reject it for the following reasons:

(1) Article 50 (2) of the Arbitration Law is irrelevant to the plaintiff's allegation concerning purported violation of the Law of Civil Transactions and the Royal Decree, as this paragraph addresses the exhaustively defined circumstances in which the court of appeal shall, of its own initiative, annul an arbitral award, namely for violation of Islamic law, public policy, or the arbitration agreement, or because the arbitration concerns matters that cannot be considered through arbitration. Accordingly, reliance on this paragraph to seek annulment of the arbitral award is incorrect.

(2) There is no violation in the arbitral award at issue with respect to Islamic law, public policy, or the arbitration agreement, nor does the arbitration concern matters that cannot be considered through arbitration. It should be noted that public policy is defined in Article 11 (3) [of the Implementing Regulations] of the Enforcement Law, which states, "Public order shall mean the provisions of Sharia."

(3) The plaintiff's allegation that the arbitral tribunal violated Article 302 of the Law of Civil Transactions with respect to interruption of limitation was previously raised and pleaded before the arbitral tribunal. The arbitral tribunal addressed it in detail and responded thereto in the reasoning of the award, specifically on page 28 of the arbitral award at issue (Exhibit No. 2: Arbitral Award Subject of the Action).

(4) The grounds for annulment of an arbitral award are exhaustively defined in the form of specific circumstances stipulated in Article 50 (1) of the Arbitration Law, and they do not encompass the plaintiff's allegation regarding violation with respect to limitation, interruption, or exceptions thereto.

(5) The plaintiff's allegation that the arbitration claim preceded the entry into force of the Law of Civil Transactions is ineffective and invalid because what matters is whether the Law of Civil Transactions was applicable prior to closure of pleadings and issuance of the arbitral award. The Law of Civil Transactions became applicable during the course of pleadings and exchange

of submissions in the arbitration case and prior to closure of pleadings and the issuance of the arbitral award . . .

(6) As for the plaintiff's allegation that the arbitration claim is excluded from limitation and that the arbitral tribunal misapplied the Royal Decree, this is incorrect for the following reasons:

i. The event that is the subject of the arbitration claim, namely the plaintiff's demand that he stated fell due on March 7, 2014 (6/5/1435H), is not excluded from limitation because this exclusion is subject to two important restrictions.

The first restriction is that limitation must have begun to run prior to entry into force of the law. This is not satisfied because prior to the Law of Civil Transactions there was no running of limitation due to absence of a statutory text regulating time periods. Accordingly, the operation of limitation is based on the newly enacted statutory text, not on any prior running of limitation that applied prior to the Law of Civil Transactions.

The second restriction is that a statutory rule establishing limitation must have existed before the law entered into force. This is not satisfied because prior to the Law of Civil Transactions there was no statutory rule on limitation. Accordingly, the rule on limitation is based on the newly enacted statutory text, not on any prior rule that applied prior to the Law of Civil Transactions.

ii. The arbitral tribunal exercised its own judgment in the application of limitation, which is within its mandate, and independent judgment is not overturned by independent judgment.

iii. Consideration of limitation, and of the existence or non-existence of exceptions and interruption, entails examination of the facts and subject matter of the case by reopening the dispute and reconsidering it anew before the esteemed Court of Appeal.

Requests:

In light of the foregoing, I ask Your Honors to:

(1) Uphold the arbitral award that is the subject of this action. . .

(2) Order enforcement of the arbitral award that is the subject of this action, in accordance with Article 51 (2) of the Arbitration Law.

Reasoning

Following review, study, and contemplation of what has been recorded, and based on Supreme Judicial Council Decision No. 133 dated October 2, 2019 (3/2/1441H), as published in Circular No. 8331 dated December 9, 2019 (12/4/1441H), which, in its eighth paragraph, confirms this Circuit's jurisdiction to hear arbitration-related disputes; and based on Articles 2, 9, 33, 44, and 50 (2) of the Arbitration Law (Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H)); and as the plaintiff filed the annulment action within the statutory period as referenced, it is therefore admissible in form.

As to the merits, the plaintiff seeks annulment of the arbitral award described in the facts of this judgment, which reached the conclusion detailed therein.

The arbitral award violates item "Fifth," paragraph (2), of Royal Decree No. M/191 dated June 18, 2023 (29/11/1444H) promulgating the Law of Civil Transactions, which provides:

The provisions of the Law of Civil Transactions shall apply to all events that occurred prior to its entry into force, except for the following: . . .

2) If the ruling relates to the lapse of a statute of limitations that began running prior to entry into force of this Law.

Thus, the arbitral award is in violation of public policy and warrants annulment pursuant to Article 50 (2) of the above-mentioned Arbitration Law, which provides, "The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of Sharia and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law."

Ruling

Based on all of the above, the Court rules as follows:

First: To accept the annulment action filed by the plaintiff as to form and the merits.

Second: To annul the arbitral award issued . . .

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