

Case 4630778016

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Qassim Court of Appeal	General	4630778016	–	February 20, 2025

Facts¹

This hearing was convened via remote video conference to consider the present action submitted by the plaintiff, which states as follows:

The first party, [...] Law Firm and Legal Consultancy, and the second party [...], have entered into an attorney fee agreement containing an arbitration agreement in Clause 11, which provides, “The First Party shall have the unilateral right to decide to resort to arbitration proceedings . . . and to appoint a sole arbitrator to decide the dispute.”²

This clause forms part of Contract No. [...], dated October 12, 2022 (16/3/1444H), and the seat of arbitration is the Eastern Province Chamber of Commerce. The subject matter of the contract does not relate to international commerce.

The parties agreed that the dispute shall be resolved by a sole arbitrator, and the appointment of a sole arbitrator has not yet been accomplished. Therefore, I request the appointment of the presiding arbitrator of an arbitral tribunal composed of a single arbitrator. This is my action.

The defendant then submitted an answer as follows:

First: Procedural defense

The Court is not permitted to consider this action because the dispute has already been initiated and registered before another court.

In view of the uncertainty and misrepresentation underlying the legal services contract in dispute, my client revoked the power of attorney immediately after signing the contract and subsequently filed a case before the Khobar General Court, registered under Case No. [...] dated October 25, 2022 (29/3/1444H), seeking rescission of the contract and of the arbitration clause, on the grounds

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.

that it involves uncertainty, misrepresentation, and a violation of Sharia and mandatory statutory provisions.

It is well established in jurisprudence and statute that when a case is already pending before a competent court or judge, other courts must refrain from hearing it in order to prevent abuse and avoid duplication of judicial effort.

This principle is confirmed in the Circular of the President of the Supreme Judicial Council No. 979/T dated November 1, 2017 (12/2/1439H), which incorporates paragraph 15 of the minutes of the committee formed by His Excellency's Decision No. 2826 dated November 18, 2017 (29/2/1439H): "If a claim concerning the same subject matter is filed before two competent courts, jurisdiction shall vest in the court before which the claim was first filed, and all documents shall be consolidated with the first claim."

Second: Substantive defense

(1) The arbitration clause in the contract is not binding on my client unless the plaintiff was the first to file a claim.

With all due respect, the arbitration clause relied upon by the plaintiff before Your Honors becomes binding upon my client only if the plaintiff was the first to file judicial or arbitral proceedings, whereupon it would be his exclusive right to choose whichever of the two avenues better suited him, and my client would be obligated to comply with the plaintiff's choice.

In the present case, however, my client was the first to file a claim, and therefore the plaintiff's right to compel my client to resort to arbitration has lapsed.

This is evident from Article 11 of the contract executed between the parties, on which the plaintiff is relying, which states:

In the event that—God forbid—any dispute arises between the parties concerning this contract, the First Party shall have the unilateral right to decide to resort to arbitration proceedings pursuant to Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H) at the Eastern Province Chamber of Commerce and Industry and to appoint a sole arbitrator to decide the dispute, or the First Party may choose litigation before the competent court to hear the dispute pursuant to Article 28 (5) of the Code of Law Practice. The Second Party shall have no right to object to any of the aforementioned choices.

This clause cannot deprive my client of his inherent right to litigation, which is guaranteed under the Basic Law of Governance, particularly as he did not obligate himself to arbitration in the event that he chose to initiate legal proceedings against the plaintiff. Judicial litigation is the default and a matter of certainty, whereas arbitration is an exception and a matter of doubt, and certainty is not displaced by doubt.

(2) The contract was signed on behalf of my client by a person without legal authority.

Assuming *arguendo* that the defendant's [correction: *plaintiff's*] assertion regarding the effectiveness of the arbitration agreement against my client is correct, my client's daughter [...] acted on my client's behalf in the contract with the plaintiff, in her capacity as her father's agent.³ Her power of attorney, however, does not authorize her to conclude an arbitration agreement or appoint arbitrators.

An arbitration agreement is an independent agreement, pursuant to Article 21 of the Arbitration Law, which provides:

An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The nullification, revocation, or termination of the contract which includes said arbitration clause shall not entail nullification of the arbitration clause therein, if such clause is valid.

The legislator has established that an arbitration agreement, to be valid, must be concluded by a person having the power of disposition, as seen in Article 10 of the Arbitration Law, which provides, "An arbitration agreement may only be concluded by a person having legal capacity to dispose of his rights, whether such person is corporate or he, or his designee, is natural."

The legislator also has established that an arbitration agreement must be in writing, failing which it shall be void, pursuant to Article 9 [(2)] of the same law.

Accordingly, where an agent acts on behalf of one of the parties to the contract, such agent must hold a special power of attorney authorizing agreement to arbitration. And as the arbitration agreement itself must be in writing, the

³ 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.

authorization to agree to arbitration must likewise be in writing, pursuant to the aforementioned article.

In the present case, my client's daughter [...] acted on his behalf in the contract in dispute under Power of Attorney No. [...] dated October 10, 2022 (14/3/1444H) (attached). This power of attorney does not contain any clause authorizing the appointment of arbitrators.

The inclusion of a clause permitting a request for arbitration does not alter this conclusion, as this clause concerns the attorney's representation authority in arbitration proceedings, such as the case presently before Your Honors, and not the authority to conclude an arbitration agreement itself.

Moreover, statute makes a distinction between types of clauses in powers of attorney, so that a clause authorizing a request for arbitration is distinct from a clause authorizing the appointment of arbitrators.

Therefore, based on the foregoing, the agent lacked the legal authority to insert the arbitration clause contained in the contract providing for the appointment of a sole arbitrator before the Eastern Province Chamber of Commerce and Industry.

In light of the above, we respectfully request Your Honors to dismiss the action and release my client from the present proceedings.

Thereafter, the Circuit requested the plaintiff to submit a response to the defendant's attorney's submission, to be attached within the case requests. The plaintiff agreed, and accordingly the hearing was adjourned.

At a subsequent hearing, the Circuit requested the plaintiff's response, which was attached within the case requests and reads as follows:

Your Honors, the Presiding Judge and Members of the Fifth Civil Circuit of the Court of Appeal, may God preserve you. Peace, mercy, and blessings of Allah be upon you.

With utmost respect and appreciation—on behalf of our client, Dr. [...] Law Firm and Legal Consultancy; pursuant to the power of attorney deposited in the case file; for the purpose of referring this dispute to arbitration and appointing the arbitrator therein; and in response to the defendant's submission—which does not conform to statute nor to proper and sound procedures—we submit the following response:

First:

The Arbitration Law (Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H)), is a specific law, whereas the Law of Civil Procedure (Royal Decree No. M/1 dated November 25, 2013 (22/1/1435H)), is a general law. It is a general rule recognized in statutory law and Islamic jurisprudence that a specific law prevails over and particularizes general laws.

Therefore, the defendant's filing of a case before the General Court in an attempt to evade the arbitration clause cannot release him from the arbitration proceedings, particularly as we raised this clause before the Circuit at the first hearing, and the defendant requested time to respond to our plea.

Second:

Article 11 of the Arbitration Law (Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H)), provides as follows:

1. A court before which a dispute, which is the subject of an arbitration agreement, is filed shall dismiss the case if the defendant raises such defense before any other claim or defense.
2. Filing the action referred to in paragraph (1) of this Article does not preclude the commencement or continuation of the arbitration proceedings or the rendering of the arbitration award.

The clarity of this provision is such that it does not require further explanation.

Third:

The assertion that it is established in jurisprudence that when a case is pending before a competent court other courts must refrain from hearing it, is in fact an argument against him rather than in his favor. This is because he brought the case before a judge who lacks jurisdiction, given the existence of an arbitration clause in the contract with his client.

Moreover, the subject matter of the two cases is not identical. In the present case, we request the appointment of a sole arbitrator to hear the dispute concerning contractual entitlements between the parties. In contrast, the defendant's case seeks rescission of the contract, and we have submitted an objection to that claim pursuant to Article 11 (1) of the Arbitration Law.

Fourth:

As for the assertion that the arbitration clause is binding upon his client only if the plaintiff was first to file a claim, and the allegation that the contract with

his client was signed by someone without legal authority, these pleas fall outside the jurisdiction of Your Honors' Circuit as a competent court under the Arbitration Law.

Fifth:

Article 21 of the Arbitration Law is an argument against the defendant's attorney rather than in his favor, as the fundamental principle of the Arbitration Law is the independence of the arbitration clause from the other provisions of the contract.

This principle has statutory applications, and it means that even if all provisions of the contract were defective or void, the arbitration clause would remain effective between the parties, and would even extend to any subsequent agreement.

Sixth:

Likewise, Article 10 [of the same law] supports our client's position rather than contradicting it, as it refers to a natural person or his representative. If the defendant wishes to challenge the representation of his client's agent [...], this would constitute a separate issue unrelated to the present case.

Seventh:

The dispute currently before this honorable Circuit concerns the appointment of the sole arbitrator who will hear the dispute, and not the powers and authorities granted to the agent by the principal, especially as her power of attorney grants her the right to resort to arbitration.

Your Honors, the arguments raised by the defendant's attorney bear no relation to statute or to the articles he cited in his submission. Accordingly, we respectfully request that our previous request be granted through the appointment of the arbitrator who will adjudicate the dispute in accordance with the Arbitration Law and the provisions of the contract concluded with our client.

The hearing was adjourned.

At a subsequent hearing, the plaintiff's attorney [...] appeared, alongside [...] as attorney for the defendant. The identities of both are recorded above. The defendant's attorney submitted a memorandum through the chat function, the text of which reads as follows:

First:

Further to the pleas we previously submitted before Your Honors at the hearing dated January 8, 2023 (17/6/1444H), concerning the inadmissibility of the present case due to the prior existence of a dispute before another court seeking rescission of the contract upon which this claim is based, we inform Your Honors that a first-instance judgment has been issued under Instrument No. [...] dated January 30, 2023 (8/7/1444H) in the previously filed case registered under Case No. [...] dated October 25, 2022 (29/3/1444H) before the Eleventh Circuit of the Khobar General Court.

The judgment ruled, “The Circuit has decided to rescind the legal services contract concluded between the plaintiff [the defendant in the present case] and the defendant [the plaintiff in the present case] dated October 12, 2022 (16/3/1444H), and the Circuit rules accordingly.”

The reasoning of the judgment stated:

After hearing the claim and the answer: the plaintiff seeks through this action the rescission of the legal services contract concluded with the defendant due to injustice and fraud. The defendant argued that the contract contains an arbitration clause, and the plaintiff responded that such clause is binding on the defendant only if he, and not the plaintiff, is the party filing legal proceedings. Upon reviewing the clause, the Circuit found the plaintiff’s argument to be valid, and therefore it has jurisdiction to hear the case.

The defendant was then asked to respond, but he insisted on his procedural defense and refused to address the merits. After being warned three times that he would be deemed as having refused to answer pursuant to Article 67 of the Law of Civil Procedure, the Circuit deemed him to have refused to answer.

The Circuit therefore established the validity of the plaintiff’s allegation of injustice and fraud, mandating rescission.

Second:

Based on the foregoing, as the aforementioned first-instance judgment ruled to rescind the contract upon which the plaintiff’s request to appoint an arbitral tribunal is based, it follows that the Khobar General Court has already examined the subject matter of the contract containing the arbitration clause invoked by the plaintiff. This means that the judicial circuit was convinced of

its jurisdiction to hear the dispute concerning the contract underlying the plaintiff's request, and it ultimately ruled to rescind that contract.

Accordingly, it is impermissible to appoint an arbitral tribunal to hear a dispute that has already been decided concerning the contract relied upon by the plaintiff. This is necessary to prevent abuse and avoid duplication of judicial effort, as confirmed by the Circular of the President of the Supreme Judicial Council No. 979/T dated November 11, 2017 (12/2/1439H), which incorporates paragraph 15 of the minutes of the committee formed by His Excellency's Decision No. 2826 dated November 18, 2017 (29/2/1439H):

If a claim concerning the same subject matter is filed before two competent courts, jurisdiction shall vest in the court before which the claim was first filed, and all documents shall be consolidated with the first claim.

This supports our principal request, which we reiterate in this submission, namely dismissal of the present action and release of our client from these proceedings.

Third:

Alternatively, and for the purpose of clarifying the subject matter of the plaintiff's request presently before Your Honors, that is, the appointment of the arbitral tribunal based on the contract underlying this action: the first-instance court has already ruled to rescind that contract, which persistently and necessarily affects the subject matter of this case and undermines reliance upon the arbitration clause contained therein.

Therefore, the appointment of the arbitral tribunal should be suspended until the aforementioned judgment is either upheld, thereby rendering the arbitration clause invalidated and ineffective, or overturned by the court of appeal, which would then allow the request to appoint the arbitrator to be considered, pursuant to Article 87 of the Law of Civil Procedure, which provides:

If a court determines that its judgment on the merit of a case should be contingent on deciding another matter on which the judgment depends, it shall order suspension of the case. Once the ground for such suspension no longer exists, the litigants may petition resumption of the case.

Accordingly, we alternatively request that the proceedings in the present case be suspended until a final decision is issued by the Eastern Province Court of Appeal concerning the aforementioned judgment.

Fourth:

In light of the foregoing, we respectfully request from Your Honors:

Principal request: Dismissal of the present action and release of our client from these proceedings.

Alternative request: Suspension of proceedings in the present action.

For further consideration, the hearing was adjourned.

At a subsequent hearing, the plaintiff's attorney [...]and the defendant's attorney [...] both appeared. The defendant's attorney stated that the first-instance judgment rescinding the contract, to which he had referred in the previous hearing, had become final after being upheld by the Court of Appeal, and that he would submit a copy of the judgment to the Circuit. The plaintiff's attorney stated that he had a memorandum he wished to submit to the Circuit.

Both parties stated that they were unable to submit their documents through Taqadi. Accordingly, the official email address of the Circuit was provided so that each party could submit their documents.

The defendant's memorandum was received, consisting of a copy of a judgment issued by the Eastern Province Court of Appeal, Seventh Civil Circuit, under Judgment No. [...] dated March 21, 2023 (29/8/1444H). The conclusion of the judgment states, "The judgment of the court of first instance rescinding the legal services contract concluded between the plaintiff [the defendant in the present case] and the defendant [the plaintiff in the present case] dated October 12, 2022 (16/3/1444H) is hereby upheld."

The memorandum of the plaintiff's attorney was also received and reads as follows:

Your Honors, the Presiding Judge and Members of the Fifth Circuit, may God preserve you. Peace, mercy, and blessings of Allah be upon you.

With due respect and appreciation, and on behalf of our client, pursuant to the power of attorney deposited in the case file, we respectfully request that this memorandum be accepted, as detailed below.

First:

Article 21 [(1)] of the Arbitration Law provides:

An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The nullification, revocation, or termination of the contract which includes said arbitration

clause shall not entail nullification of the arbitration clause therein, if such clause is valid.

This article establishes the independence of the arbitration clause whenever it is included in the principal contract, confirming that it constitutes an agreement separate from the other contractual terms. Therefore, even if the contract containing the arbitration clause becomes void for a legally recognized reason, this does not affect the arbitration clause, which remains valid, effective, and binding upon both parties. The phrase “if such clause is valid” contained in the article confirms the absolute independence of the arbitration clause, even if the contract itself is declared void.

Second:

The question of whether the arbitration clause is lapsed or void or does not encompass the dispute falls within the jurisdiction of the arbitral tribunal, as provided in Article 20 (1) of the Arbitration Law, which states, “The arbitration tribunal shall decide on any pleas related to its jurisdiction, including those based on the absence of an arbitration agreement, expiry or nullity of such agreement, or non-inclusion of the subject-matter of the dispute in the agreement.”

This reflects the principle of arbitration known as the competence–competence doctrine, which grants the arbitral tribunal the authority to decide pleas concerning its jurisdiction. In the above Article 20 (1), the law requires the arbitral tribunal to decide pleas relating to its jurisdiction and the validity of its mandate over the arbitral proceedings, regardless of the substance of the plea, including pleas based on the non-existence, lapse, or nullity of the arbitration agreement, or its non-inclusion of the subject matter of the dispute, so long as it does so within the limits relating to the validity of its mandate over the arbitration proceedings.

Thus, the principle of independence of the arbitration clause protects it from all grounds of nullity affecting the contract, thereby ensuring the effectiveness of the arbitration clause as one of the guarantees established for contracting parties.

Your Honors, I respectfully request that Your Honors accept our previous request for the appointment of the arbitrator who will consider the dispute in accordance with Article 15 (1) of the Arbitration Law.

May God keep and protect you. With regards, Lawyer [...]

The hearing was adjourned to review the submissions provided by the parties.

In a subsequent hearing, the plaintiff's attorney [...] and the defendant's attorney [...] both appeared. The Circuit reviewed the submissions presented by both parties during the previous and preceding hearings.

Accordingly, the Circuit addressed the defendant regarding his plea asserting that the contract between him and the plaintiff had been rescinded according to the judgment submitted at the previous hearing, and that this rescission invalidates the arbitration clause. The Circuit informed him that this plea is not accepted, as Article 21 of the Arbitration Law provides:

An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The nullification, revocation, or termination of the contract which includes said arbitration clause shall not entail nullification of the arbitration clause therein, if such clause is valid.

Moreover, the defendant's plea that the agent who executed the contract lacked authority for arbitration is incorrect. The Circuit reviewed the text of the power of attorney indicated in the contract—No. [...] dated October 10, 2022 (14/3/1444H), of which the defendant submitted a copy attached to his first statement of defense—and found that it included authorization for arbitration and acknowledgment.

The Circuit requested the parties to agree on a sole arbitrator, but no agreement was reached. The plaintiff requested that the Court select the arbitrator pursuant to Article 15 (1) (a) of the Arbitration Law. Accordingly, the Circuit proceeded with the necessary steps to select the sole arbitrator and adjourned the hearing until completion of the appointment process.

In a subsequent hearing, the attorneys for the plaintiff and the defendant who had attended the previous hearings appeared. The identities of both are recorded above.

The Circuit had written to the Saudi Center for Commercial Arbitration to nominate a sole arbitrator and had received a response from the SCCA nominating several arbitrators. The Circuit had written to the nominated arbitrators to confirm their agreement within two business days. The Circuit received proposals from the following arbitrators: the lawyer Dr. [...] with fees of SAR 95,000 (ninety-five thousand Saudi riyals), and the lawyer [...] with fees of SAR 90,000 (ninety thousand Saudi riyals). Upon reviewing the proposals, the Circuit decided to adjourn the case for deliberation and issuance of the judgment.

Reasoning

In view of the foregoing: the plaintiff requested the appointment of a sole arbitrator to adjudicate the dispute, based on the contract concluded with the defendant and the arbitration

clause therein. The defendant objected to the arbitration request and submitted a statement of defense that has been recorded in the case record and is summarized as follows:

First: Procedural defense

The defendant argues that the Court is not permitted to consider this action because the dispute has already been initiated and registered before another court, as his client previously filed a lawsuit before the Khobar General Court, registered under No. [...] dated October 25, 2022 (29/3/1444H), seeking rescission of the contract and of the arbitration clause.

Second: Substantive defense

[The defendant makes the following case:]

(1) The arbitration clause in the contract is not binding on my client unless the plaintiff was the first to file a claim.

With all due respect, the arbitration clause relied upon by the plaintiff before Your Honors becomes binding upon my client only if the plaintiff was the first to file judicial or arbitral proceedings, whereupon it would be his exclusive right to choose whichever of the two avenues better suited him, and my client would be obligated to comply with the plaintiff's choice.

In the present case, however, my client was the first to file a claim, and therefore the plaintiff's right to compel my client to resort to arbitration has lapsed.

This is evident from Article 11 of the contract executed between the parties, on which the plaintiff is relying, which states:

In the event that—God forbid—any dispute arises between the parties concerning this contract, the First Party shall have the unilateral right to decide to resort to arbitration proceedings pursuant to Royal Decree No. M/34 dated April 16, 2012 (24/5/1433H) at the Eastern Province Chamber of Commerce and Industry and to appoint a sole arbitrator to decide the dispute, or the First Party may choose litigation before the competent court to hear the dispute pursuant to Article 28 (5) of the Code of Law Practice. The Second Party shall have no right to object to any of the aforementioned choices.

(2) The contract was signed on behalf of my client by a person without legal authority.

Assuming *arguendo* that the defendant's [correction: *plaintiff's*] assertion regarding the effectiveness of the arbitration agreement against my client is

correct, my client's daughter [...] acted on my client's behalf in the contract with the plaintiff, in her capacity as her father's agent. Her power of attorney, however, does not authorize her to conclude an arbitration agreement or appoint arbitrators.

An arbitration agreement is an independent agreement, pursuant to Article 21 of the Arbitration Law, which provides:

An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The nullification, revocation, or termination of the contract which includes said arbitration clause shall not entail nullification of the arbitration clause therein, if such clause is valid.

In a subsequent hearing, the defendant added the following:

A first-instance judgment has been issued under Deed No. [...] dated January 30, 2023 (8/7/1444H) in the previously filed case registered under Case No. [...] dated October 25, 2022 (29/3/1444H) before the Eleventh Circuit of the Khobar General Court.

The judgment ruled, "The Circuit has decided to rescind the legal services contract concluded between the plaintiff [the defendant in the present case] and the defendant [the plaintiff in the present case] dated October 12, 2022 (16/3/1444H), and the Circuit rules accordingly."

The defendant further stated that this judgment had been upheld by the Court of Appeal.

The Circuit rejects this defense for the following reasons:

Article 21 of the Arbitration Law provides that the arbitration clause is independent from the other provisions of the contract, and that the nullity of the contract provisions does not result in the nullity of the arbitration clause. Therefore, the arbitration clause remains valid between the parties so long as the clause itself is valid.

Furthermore, issues relating to the lapse, nullity, or scope of the arbitration clause fall within the jurisdiction of the arbitral tribunal, as provided under Article 20 (1) of the Arbitration Law, which states, "The arbitration tribunal shall decide on any pleas related to its jurisdiction, including those based on the absence of an arbitration agreement, expiry or nullity of such agreement, or non-inclusion of the subject-matter of the dispute in the agreement."

Additionally, the aforementioned judgment did not include any ruling invalidating the arbitration clause, but merely ordered rescission of the contract.

Moreover, the defendant's plea that the agent who executed the contract lacked authority for arbitration is incorrect. The Circuit reviewed the text of the power of attorney indicated in the contract—No. [...] dated October 10, 2022 (14/3/1444H), of which the defendant submitted a copy attached to his first statement of defense—and found that it included authorization for arbitration and acknowledgment.

Article 15 (1) of the Arbitration Law provides:

The two parties to the arbitration shall agree on the appointment of arbitrators.
If they fail to reach an agreement, the following shall apply:

- a) If the arbitration tribunal is composed of one arbitrator, the competent court shall appoint said arbitrator.

Accordingly, the Circuit has decided to select the most appropriate proposal, which is the one submitted by the lawyer [...], whose fee is SAR 90,000 (ninety thousand Saudi riyals).

As the proposed arbitrator satisfies the legal requirements necessary for appointment as a sole arbitrator, the Circuit concludes to select him as sole arbitrator to adjudicate the dispute, and it rules accordingly.

Ruling

The Circuit hereby rules to appoint the lawyer [...] as sole arbitrator to adjudicate and resolve the dispute in this case pursuant to the Arbitration Law, for a fee of SAR 90,000 (ninety thousand Saudi riyals) to be paid equally between the parties, or by one of them, with the losing party ultimately bearing the costs following the issuance of the arbitral award, on the grounds detailed in the reasoning.

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