

Case 4530627070

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Qassim Court of Appeal	General	4530627070	–	January 2, 2024

Facts¹

The hearing was convened to consider the action for annulment of an arbitral award filed by [the plaintiff] [...] Law Firm and Legal Consultations [the claimant in the arbitration]. [...] [appeared at the hearing].²

Neither the defendant [...] nor any representative appeared, despite having been duly notified under Notification No. [...] dated January 1, 2023 (8/6/1444H), which stated: “Dear [...], You may attend Hearing No. 1 in Case No. [...] scheduled for January 2, 2023 (9/6/1444H) at 11:30 a.m. by accessing the hearing link.”

Neither the defendant [...] for Operation and Maintenance [a respondent in the arbitration] nor any representative appeared, despite having been duly notified under Notification No. [...] dated January 1, 2023, which stated: “Dear [...] for Operation and Maintenance, You may attend Hearing No. 1 in Case No. [...] scheduled for January 2, 2023 (9/6/1444H) at 11:30 a.m. by accessing the link.”

When asked about the action, the plaintiff referred to the statement of claim submitted through the electronic system, the text of which reads as follows:

The first party, [...] Law Firm and Legal Consultations, and the second party, [...] for Operation and Maintenance and [...], entered into an attorney fee agreement, which contains an arbitration agreement in Clause 8, which provides, “Any dispute, disagreement, or claim arising out of this contract, its termination, or invalidity, even if connected.”³

This clause forms part of Contract No. [...] dated 23/8/[...]H, with the seat of arbitration in Riyadh, and the subject matter of the contract does not relate to international commerce.

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.

3 This sentence is incomplete in the original Arabic text.

Accordingly, an arbitral tribunal was appointed in the dispute with the defendant, as follows: [...], Secretary [...].

The arbitral tribunal issued its award in the dispute, ruling as follows: “The claimant’s claim is dismissed on the basis that the subject matter of the claim does not fall under the contract subject to arbitration” (Exhibit: Copy of Award).

We were notified of the arbitral award on October 5, 2022 (9/3/1444H), and based on the following grounds [we seek annulment of said award]:

Ground of objection:

The arbitral tribunal ruled the dispute outside its mandate without lawful justification, notwithstanding that the contract expressly provides for an arbitration clause and confers jurisdiction upon the arbitral tribunal to adjudicate disputes arising from the contract subject to arbitration.

The arbitral tribunal erred in characterizing the claim and excluded “works relating to the preparation of studies and work plans” from the scope of the contract subject to arbitration on the basis that [they] fall under a prior contract dated 25/3/[...].

Ground of objection:

The arbitral tribunal violated the statutory rules agreed upon by the parties and exceeded the agreed arbitration period. The request for arbitration was dated June 4, 2022 (attached), the submission was dated June 21, 2022, and the arbitral award was pronounced on August 24, 2022. Accordingly, the arbitral tribunal issued its award after exceeding the agreed statutory period.

Furthermore, when the arbitral tribunal requested evidence establishing that the work subject to arbitration had been assigned to the plaintiff, the contract was submitted, which expressly provides that the subject matter of the contract includes studies and work plans. An email from the defendant was also submitted to the arbitral tribunal, in which it stated that “the studies and work plans subject of the new contract are the matters delivered to you under the previous contract.”

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

When asked about the deposit of the arbitral award, he said:

A request for depositing the arbitral award was submitted under No. [...] through Najiz, and this Circuit issued a judgment accepting the deposit of the arbitral award under No. [...] dated December 19, 2022 (25/5/1444H).

He was then asked when the annulment action was filed and when he received the arbitral award instrument. He answered:

We inform Your Honors that the annulment application was filed on December 2, 2022 (8/5/1444H) under Application No. [...] dated December 2, 2022 (8/5/1444H) (copy of application attached). Prior to filing the annulment, and due to a Najiz malfunction preventing submission of the action (screenshot of system error attached), the annulment application was submitted through the exchange of submissions in the arbitral award deposit case under Application No. [...] dated December 2, 2022 (8/5/1444H).

Accordingly, the hearing was adjourned to ensure the attendance of the defendants and to examine the case.

At a subsequent hearing, the plaintiff's attorney appeared, while the defendants and their representatives failed to appear despite having been electronically notified under No. [...].

The Court reviewed the plaintiff's claim as recorded in the previous hearing and asked him whether it represented his action. He replied:

This is a summary of it. My full claim is what I sent through the chat function, and I request that it be recorded as follows:

Pursuant to Article 50 of the Arbitration Law, which provides, "An action to nullify an arbitral award shall not be admitted except in the following cases."

First:

The arbitral tribunal violated Article 50 (1) (f) of the Arbitration Law, which [admits an annulment action], "If the arbitration award rules on matters not included in the arbitration agreement," as well as 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."

Explanation:

The operative part of the arbitral award states, "dismissed on the basis that the subject matter of the claim does not fall under the contract subject to arbitration, thereby placing it outside the arbitral tribunal's mandate."

Ground of objection:

The arbitral tribunal ruled the dispute outside its mandate without lawful justification, notwithstanding that the contract expressly provides for an arbitration clause and confers jurisdiction upon the arbitral tribunal to adjudicate disputes arising from the contract subject to arbitration.

The arbitral tribunal mischaracterized the claim and excluded “works relating to the preparation of studies and work plans” from the scope of the contract subject to arbitration on the basis that [they] fall under a prior contract dated 25/3/[...], relying on an email from the defendants stating, “provided that these matters shall be within what was agreed upon under the contract dated 25/3/[...].”

The meaning of this email is that the studies under the contract subject to arbitration relate to the same matters previously delivered under the contract dated 25/3/[...], not that they are governed by the previous contract—as understood by the arbitral tribunal—implying, *a contrario*, the exclusion of “works relating to legal studies” from the scope of the contract subject to arbitration.

This constitutes a violation of Article 50 (1) (f) of the Arbitration Law, as the arbitral tribunal failed to adjudicate matters covered by the arbitration agreement.

The tribunal also violated the provisions of Sharia and public policy in the Kingdom due to its mischaracterization of the facts, which directly affected the operative part of the arbitral award with the ruling that the claim was outside the mandate of the arbitration.

Second:

Pursuant to Article 50 (1) (d) of the Arbitration Law, which [admits an annulment action], “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.”

Explanation:

The contract subject to arbitration provides in its arbitration clause, “The arbitration request shall be decided and an award rendered in the case within

a maximum period of two months from the date of submission of the arbitration request.”

Ground of objection:

The arbitral tribunal violated the statutory rules agreed upon by the parties and exceeded the agreed arbitration period. The request for arbitration was dated June 4, 2022 (attached), the submission was dated June 21, 2022, and the arbitral award was pronounced on August 24, 2022. Accordingly, the arbitral tribunal issued its award after exceeding the agreed statutory period.

Third:

Pursuant to 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.”

Explanation:

The arbitral tribunal violated the fundamental principles of litigation and public policy due to inadequate reasoning. The reasoning stated: “after requesting evidence from the claimant regarding the assignment and delivery of the work subject of the claim, it relied on: the respondent’s admission in its statements of defense, their implied acknowledgment through not objecting to the delivery of such works, and reliance on the evidentiary value of email correspondence.”

Ground of objection:

When the arbitral tribunal requested evidence establishing that the work subject to arbitration had been assigned to the plaintiff, the contract was submitted, which expressly provides that the subject matter of the contract includes studies and work plans. An email from the defendant was also submitted to the arbitral tribunal, in which it stated that “the studies and work plans—the subject of the new contract—are the matters delivered to you under the previous contract.”

These pieces of evidence are material and determinative in establishing a right. The arbitral tribunal’s failure to consider them in its reasoning renders the arbitral award defective due to inadequate reasoning, as it contravenes the judicial principle which provides, “If a party to the case submits arguments

during the proceedings, the judge must examine them, either accepting or rejecting them, with reasons given for such acceptance or rejection” (Permanent Body of the Supreme Judicial Council: 108/5, November 12, 1990 (24/4/1411H)).

The default rule is that the court must address any substantive defense which, if valid, would affect the outcome of the judgment, and failure to do so renders the judgment defective due to inadequate reasoning and necessitates its reversal. *A fortiori*, this applies to arbitral awards. Moreover, if the reasoning is not sound, clear, sufficient, and persuasive, the penalty is reversal, as reasoning is one of the fundamental guarantees of litigation. Inadequacy in reasoning arises where the facts of the case, surrounding circumstances, and evidence are not sufficiently set out, thereby creating a deficiency in the legal basis of the judgment.

The award failed to address material defenses and evidence in its reasoning and instead relied on weaker, secondary indicia, which resulted in the award deviating from the standards of judicial fairness.

Additionally, the reasoning in the award is contradictory, as it states, “the respondent argued that those works were assigned pursuant to a prior contract, while also denying the claimant’s delivery of those works.”

So, was the work assigned under a prior contract, or did they deny delivery? Failure to address matters that affect the case is a form of inadequate reasoning. The defendant was not asked about this contradiction of whether the assignment had been made, nor asked whether they had actually received the studies subject of the contract. Accordingly, based on the foregoing, we respectfully request Your Honors to set aside the challenged arbitral award and to rule as follows:

Annul the arbitral award for the reasons set out above.

Due to the defendant’s absence despite proper notification, the Circuit decided to proceed with the case and requested the plaintiff to submit a complete copy of the arbitral tribunal hearing record, and he undertook to do so.

In a subsequent hearing, the plaintiff’s attorney appeared, while the defendants and their representatives failed to appear despite having been notified. The plaintiff’s attorney was asked about the hearing record, and he stated that he had sent it to the Circuit’s email. They were located and attached to the case file. The hearing was then adjourned for examination.

In a subsequent hearing, [...] appeared, while the defendant did not appear despite being notified under No. [...]. When asked about the case number for the deposit of the arbitral award, the plaintiff stated that it is No. [...], with instrument No. [...] dated December 19, 2022 (25/5/1444H). The hearing was adjourned for further consideration.

The session was convened, attended by [...] as attorney for the plaintiff, [...] Law Firm and Legal Consultations. The other party, the defendant [...], did not appear, nor was any representative present on his behalf. Upon reviewing the hearing notifications, it was found that service had not been carried out both parties, as it remained “in process.”

The person present stated that he had received the notification and attended the hearing through the provided link. He further stated, “I have evidence demonstrating that the arbitration period had expired prior to the issuance of the award, and I will present it at the next hearing.” Accordingly, the hearing was adjourned.

In a subsequent hearing, the plaintiff’s attorney appeared, while neither the defendant nor any representative appeared. The plaintiff’s attorney submitted a detailed response concerning the periods he had mentioned, asserting that the arbitral tribunal did not comply therewith, as follows:

Further to Your Honors’ request in the hearing held on March 27, 2023 (5/9/1444H) in Case No. [...], regarding the submission of evidence proving the expiration of the arbitration period prior to the issuance of the award:

We hereby inform Your Honors that the arbitration clause agreed between the parties, as set out in Clause 8 of the contract executed between them, provides, “The arbitration request shall be decided and an award rendered in the case within a maximum period of two months from the date of submission of the arbitration request by either party.”

Accordingly, we hereby submit the chronological sequence of the arbitration proceedings:

(1) On June 14, 2022 (15/11/1443H), a request was submitted for the appointment of [...] at [...] University.

(2) On June 21, 2022 (22/11/1433H), Dr. [...] was appointed as arbitrator by [...] (Exhibit No. 1: Email from [...] Office Manager). Commencement of the arbitral tribunal’s mandate.

(3) On June 27, 2022 (28/11/1443H), we received a WhatsApp message indicating the appointment of the secretariat and providing contact details (Exhibit No. 2: Copy of Correspondence with Arbitrator).

(4) On July 2, 2022 (3/12/1443H), we received an email from the secretariat containing requests related to the arbitration. (Exhibit No. 3: Email from Secretariat of the Arbitral Tribunal).

(5) On August 13, 2022 (15/1/1444H), we received an email from the secretariat stating that a statement had been issued by [...], the relevant part of which reads: "The arbitral tribunal's mandate in these proceedings has commenced pursuant to the email sent by [...]" (Exhibit No. 4: Email from Secretariat of the Arbitral Tribunal; Exhibit No. 5: Statement of Arbitrator).

(6) On August 14, 2022 (16/1/1444H), we received an email from the secretariat attaching a statement issued by [...] regarding the joinder of the guarantor [...] to the arbitration proceedings (previously submitted).

(7) On September 8, 2022 (12/2/1444H), we received the minutes of the first hearing (previously submitted).

(8) On September 19, 2022 (23/2/1444H), we received the minutes of the second hearing (previously submitted).

(9) On September 30, 2022 (4/3/1444H), we received the minutes of the third hearing (previously submitted).

(10) On October 5, 2022 (9/3/1444H), we received the minutes of the fourth hearing and the arbitral award instrument (previously submitted).

Accordingly, it is evident to Your Honors that the arbitration proceedings commenced on June 21, 2022 (22/11/1433H) and the award was issued on October 5, 2022 (9/3/1444H) (i.e., after more than three months had elapsed). Therefore, the arbitral award was rendered after the expiry of the period stipulated in the arbitration clause between the parties.

Article 40 (1) of the Arbitration Law provides, "The arbitration tribunal shall render the final award ending the entire dispute within the period agreed upon by both parties."

The arbitral tribunal's mandate had expired prior to the issuance of the arbitral award. Consequently, the arbitral award is null and void, and we request that Your Honors render a judgment annulling the arbitral award.

Upon questioning him regarding the date on which the proceedings on the merits commenced, he stated that the first hearing at which the plaintiff's claim was presented took place on August 28, 2022 (1/2/1444H), and that the first procedural step, namely the request

for contracts, was on July 2, 2022 (3/12/1443H). A request was made to sign the arbitration document, but it was not signed. A request was made to his client a second time on August 13, 2022 (15/1/1444H). A settlement was proposed but was not concluded, and consideration of the case commenced on August 13, 2022 (15/1/1444H).

He was then asked whether he had submitted a request to the arbitrator asserting that the arbitration period had expired. He answered, “No, we did not raise any objection regarding the expiry of the arbitration period.”

He was further asked whether he had submitted a request to the court to terminate the arbitration proceedings due to the expiry of the arbitration period. He answered, “No, we did not submit any such request to the court.”

Accordingly, the hearing was adjourned for examination.

In a subsequent hearing, a representative of one of the parties appeared, and as the case was ready for adjudication, judgment was pronounced.

Reasoning

Upon review of the case, the arbitral award issued therein, and the contract containing the arbitration clause, and pursuant to Article 8 (1) of the Arbitration Law.

In the annulment action, the plaintiff contended that the arbitration period had expired prior to the issuance of the arbitral award, and such a violation—if established—would constitute a violation by the arbitral tribunal. Given, however, that the plaintiff’s attorney did not object to such violation before the arbitral tribunal, nor before the competent court, pursuant to Article 7 of the Arbitration Law, this constitutes a waiver of his right.

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

1. An action to nullify an arbitration award shall not be admitted except in the following cases:
 - 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 agreed to apply to the subject matter of the dispute.
 - e) If the composition of the arbitration tribunal or the appointment of arbitrators was 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 arbitration tribunal fails to observe the conditions required for the award in a manner that affects its substance, or if the award is based on void arbitration proceedings that affect it.
2. The competent court considering the nullification action shall, on its own initiative, nullify the award if it violates the provisions of Sharia and public order in the Kingdom or the agreement of the arbitration parties, or if the subject matter of the dispute cannot be referred to arbitration under this Law.
 3. The arbitration agreement shall not terminate with the issuance of the competent court's decision nullifying the arbitration award unless the arbitration parties agree thereto or a decision nullifying the arbitration agreement is issued.
 4. The competent court shall consider the action for nullification in cases referred to in this Article without inspecting the facts and subject matter of the dispute.

The arguments raised by the plaintiff do not fall within the circumstances exhaustively defined in the aforementioned article and would necessitate examination of the facts and merits of the dispute, which the Court is not permitted to undertake.

The arbitral award was issued in accordance with Article 42 of the Arbitration Law and addressed all aspects of the dispute arising from the arbitration agreement.

Accordingly, the Circuit concludes that the plaintiff's arguments are unfounded, and the action must therefore be dismissed on the merits, the arbitral award upheld, and enforcement thereof ordered in accordance with Article 51 (2) and Article 55 of the Arbitration Law.

Ruling

The Circuit hereby rules as follows:

First: The annulment action is accepted in form and rejected on the merits.

Second: The arbitral award dated August 24, 2022, issued by the arbitral tribunal composed of [...] and Secretary [...], appointed to adjudicate the dispute between [...] Law Firm and Legal Consultations and [...] for Operation and Maintenance, is hereby upheld and its enforcement ordered insofar as it ruled:

First: The claimant's claim is dismissed on the basis that the subject matter of the claim does not fall under the contract subject to arbitration, thereby placing it outside the arbitral tribunal's mandate.

Second: The respondents' claim for compensation for damages is dismissed for the reasons set out in the award.

Third: The claimant's request to order the respondents to bear the arbitration costs is dismissed for the reasons stated in the award.

This judgment of the Court of Appeal is final and not subject to appeal by any means.