

Case 4630244724

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Eastern Province Court of Appeal	Labor	4630244724	–	September 19, 2024

Facts¹

The Circuit examined the above-referenced case concerning the action filed by [...] against [...].² Both the plaintiff [the respondent in the arbitration] and the defendant [the claimant in the arbitration] appeared.³ Their details are recorded in the case file. When the plaintiff was asked about his action, he submitted his action in a written document, the text of which is as follows:

With reference to the above subject, I submit to Your Honors an action for annulment of the arbitral award attached hereto, for the following reasons:

First: As to form

The arbitral award was issued by the arbitral tribunal comprising the sole arbitrator, [...], National ID No. [...] on May 12, 2024 (4/11/1445H). Accordingly, I submit this annulment action within the time limit stipulated in Article 51 [(1)] of the Arbitration Law, requesting that the action be accepted in form.

Second: The award subject of the annulment action

The arbitral award subject of the annulment action was issued as follows:

The respondent, [...], Civil Registry No. [...], is ordered to pay the claimant the following:

First: An amount of SAR 69,000 (sixty-nine thousand Saudi riyals) for the rights arising from the contract.

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.

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.

Second: An amount of SAR 7,500 (seven thousand five hundred Saudi riyals) representing the arbitral tribunal fees borne by the claimant.

Third: An amount of SAR 20,000 (twenty thousand Saudi riyals) representing the attorney's fees incurred by the claimant in this case.

Third: Grounds for the annulment action

(1) Nullity of the arbitration agreement:

The arbitration clause was based on a contract concluded on behalf of a commercial company. However, the power of attorney under which the contract containing the arbitration clause was concluded was issued by the principal in his personal capacity and not as a representative of the company.

Whereas the company possesses an independent corporate personality distinct from individuals and managers, pursuant to the provisions of Article 19 of the Companies Law, this contract is null and void, as it was issued by a party lacking the requisite authority.

The contract was concluded between the plaintiff and the defendant pursuant to Power of Attorney No. [...] dated March 4, 2020 (9/7/1441H). This is an individual power of attorney issued by the contracting party acting in his personal capacity, rendering the contract null and void. The other contracting party knew, or ought to have known, this fact, given that he has specialized, professional legal knowledge.

By disregarding or being unaware of this fact, he concluded a void contract with a person lacking the requisite authority. Consequently, the entire contract containing the arbitration clause is rendered null and void, which in turn renders the arbitral award null and void as it was fundamentally based on that clause.

As for the arbitral tribunal's determination that the plaintiff's consent to refer the dispute to arbitration and his participation in its proceedings constitute acceptance of arbitration on his part, this is refuted by the fact that such pleas must be raised before the arbitral tribunal and not before the competent court, whose duties do not include entering into the details of the dispute.

This is stipulated in Article 20 [(1)] of the Arbitration Law, which provides, "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.”

Therefore, the plea of lack of jurisdiction falls within the jurisdiction of the arbitral tribunal and not the competent court.

Furthermore, the legislator took precautions for such a matter and confirmed in Article 20 (2) [of the same law] that a party’s participation in the arbitral proceedings and the appointment of an arbitrator does not in any way constitute a waiver of his pleas [of lack of jurisdiction]. Accordingly, the tribunal must consider such pleas, and the party may challenge the tribunal’s award if the tribunal refuses to admit them.

This means that the party may raise the plea of lack of jurisdiction of the arbitral tribunal or the nullity of the arbitration agreement, and the tribunal must rule on such nullity rather than considering the plaintiff’s participation in the action as acceptance and a waiver of the plea.

Moreover, assuming for the sake of argument that the aforementioned power of attorney was not issued in an individual capacity or that companies do not possess an independent legal personality, the power of attorney did not grant the authority to contract with a legal advisor, rendering the contract itself null and void. Such nullity consequently extends to the tribunal’s decision.

(2) Violation of public policy by the arbitral tribunal’s decision:

The defendant’s assertion that he does not accept that his rights are liabilities of the company, and his subsequent decision to direct his claim against the plaintiff, together with the arbitral tribunal’s acceptance of this position, are contrary to Article 9 of the Companies Law, which establishes that a company has an independent financial liability and a separate corporate personality distinct from its owner or partners.

It is also contrary to Article 18 of the Law of Civil Transactions, which establishes a separate financial liability and the right to litigate. As long as the defendant claims that he contracted with the company, his assertion that he does not accept the transfer of his rights is unacceptable. He fundamentally contracted with a company, not an individual or an establishment, regardless of how he prefers to view the situation.

As for the arbitral tribunal's reliance on the Trade Names Law in its award, it is a misplaced citation, as the law governing this situation is the Companies Law, not the Trade Names Law.

Furthermore, the referenced article governs transfers of a trade name from one entity to another and the use of a trade name without registration; it has no bearing on the conversion of a commercial entity into another form, which is governed by Chapter 10 of the Companies Law.

The arbitral tribunal's alignment with the defendant's wishes led to a violation of the mandatory provisions of the Companies Law. This constitutes a violation of public policy, thereby allowing the award to be challenged for violating the provisions of Article 50 (2) of the Arbitration Law.

The defendant could have brought an action against the principal named in the individual power of attorney under which the contract was signed, if he believed that his alleged rights would be preserved against individuals rather than corporate entities. The plaintiff contracted in his capacity as an agent, not as a principal—a fact that the defendant does not dispute.

This constitutes a violation of the mandatory provisions of the Law of Civil Transactions, which attribute contractual obligations to the principal in the event of contracting through agency, pursuant to Article 90, which provides: "If an agent, within the limits of his agency, concludes a contract in the principal's name, the rights and obligations arising from such contract shall accrue to the principal."

(3) The arbitral tribunal ruling on matters not covered by the arbitration agreement or the referral decision:

The arbitral tribunal ruled on attorney's fees, which is a matter not encompassed by the arbitration agreement. The arbitral tribunal's decision to obligate one of the parties to pay attorney's fees must be pursuant to a statutory provision.

This is similar to what is established with respect to arbitrators' fees, where statute permits the competent court to refer the determination of arbitrators' fees to the arbitral tribunal in the referral decision, or where such authority derives from the arbitration agreement.

Because both the arbitration agreement and statute are devoid of any provision granting the tribunal the authority to rule on attorney's fees, the tribunal's

decision to take up this matter constitutes a violation of Article 50 (1) (f) [of the Arbitration Law]. Therefore, the award must be annulled under any circumstances, regardless of the outcome of this action.

Accordingly, and based on all the foregoing, I petition Your Honors to render a judgment annulling the arbitral tribunal's award.

When asked to answer, the defendant requested a time extension.

In another hearing, in the presence of both parties whose details are recorded in the case file, the defendant's attorney was asked about his answer and submitted a written statement of defense, the text of which is as follows:

First:

The plaintiff's plea regarding the nullity of the arbitration clause and his legal standing in the arbitration proceedings is baseless and merely an attempt to evade our client's rights owed by the plaintiff. The arbitral award contained sufficient reasoning to rebut this argument.

We also emphasize that his claim is not based on valid legal grounds, particularly as he initially accepted the commencement of the arbitration proceedings and did not object to the appellate court's appointment of an arbitrator to consider the dispute when my client filed his action for the appointment of an arbitrator. He said, "I have no objection to the appointment of an arbitrator selected by the court," which constitutes an explicit acceptance of the arbitration clause and establishes his legal standing in his personal capacity.

Second:

The contract was concluded on behalf of the company, represented by the plaintiff, [...]. The contract has been executed by both parties, which constitutes a clear and explicit acceptance of the contract and its provisions.

Article 485 of the Law of Civil Transactions [provides]: "The subsequent ratification of a disposition shall be deemed an antecedent power of attorney for such disposition."

Accordingly, even if the power of attorney pursuant to which the contract was concluded were defective, the company's execution of the contract and its

conduct in accordance therewith constitutes an explicit ratification of the contract, thereby rendering it responsible for all obligations arising therefrom.

Third:

We clarified to the arbitral tribunal, when it inquired regarding the defendant's legal standing, and the plaintiff also acknowledged, that the contract was initially concluded with the company. The company was subsequently converted into an establishment, and ownership thereof was transferred to the plaintiff, [...], together with all its assets and liabilities.

It remained a sole proprietorship owned by the plaintiff until the issuance of this Circuit's ruling constituting the arbitral tribunal. It was recently converted again into a company, and the announcement thereof was published on February 12, 2024 (2/8/1445H), after the arbitral tribunal had commenced to consider the dispute.

Our client did not accept the transfer of his rights to the company's liability, having filed his claim prior to its conversion.

Based on Article 9 of the Trade Names Law and Article 16 of its Implementing Regulations, legal standing attaches to the plaintiff, [...]. Furthermore, the submissions he presented to the arbitral tribunal contain explicit statements acknowledging his responsibility for the claim and his readiness to address it. It is stated on page 12 of the award, "I remain committed to the arbitration case, whether it is a company or an establishment." It is also stated on page 6 of the award, "This does not preclude our responsibility as a company or an establishment, as I am the principal and the authorized representative of the company."

Fourth:

My client previously filed Case No. [...] against [...] seeking the same claims. The establishment raised the defense that an arbitration clause existed. Consequently, the Seventh Circuit of the Dammam General Court issued Judgment No. [...] dismissing the case due to the existence of the arbitration clause.

Now, the plaintiff seeks to annul the arbitration clause, which constitutes nothing more than manipulation and an attempt to evade the fulfillment of my client's rights owed by him.

Fifth:

With regard to the plaintiff's allegation that the arbitral tribunal decided on attorney's fees although the matter was not covered by the arbitration agreement, Article 20 [(2)] of the Arbitration Law provides that pleas that the arbitration agreement does not encompass a matter raised by the other party must be raised immediately; otherwise, the right to raise such plea shall lapse.

The award clearly shows that the plaintiff did not raise this plea before the arbitral tribunal during the proceedings, which results in the forfeiture of his right to raise such plea before the Court of Appeal.

Sixth:

Attorney fees are ancillary rights to the principal right, being compensation for the harm suffered by the litigants.

Furthermore, the Code of Law Practice stipulates that the circuit which considered the original action has the jurisdiction to consider the claim for attorney fees.

Moreover, the Implementing Regulations of the Commercial Courts Law, in Article 164, stipulate that the judgment shall include a decision on the claim for compensation, including litigation expenses.

Article 3 (5) of the Implementing Regulations of the Law of Civil Procedure also provides for the right of the party harmed by the action to claim compensation and submit his request during the consideration of the case.

Being that attorney fees fall within compensation, the arbitral tribunal's award is in accordance with the correct application of statute.

Accordingly, I request that the plaintiff's action be dismissed.

Upon presentation of the above to the plaintiff, he requested a time extension to respond.

In another hearing, attended by both parties whose details are recorded in the case file, the plaintiff was asked about the response for which he had requested an extension. He submitted his response in writing, which was recorded in the case minutes. When it was presented to the defendant's attorney, he stated that he relied on the statement of defense previously submitted. The plaintiff likewise stated that he relied on his previous submissions.

The Circuit reviewed the judgment issued by this Circuit appointing an arbitrator pursuant to Instrument No. [...] dated February 5, 2024 (4/7/1445H) in Case No. [...]. The instrument

included the plaintiff's consent to the appointment of an arbitrator to decide the dispute arising between the plaintiff and the defendant.

The Circuit also reviewed the arbitral award rendered by the arbitrator [...], which states:

The respondent, [...], Civil Registry No. [...], is ordered to pay the claimant the following:

First: An amount of SAR 69,000 (sixty-nine thousand Saudi riyals) for the rights arising from the contract.

Second: An amount of SAR 7,500 (seven thousand five hundred Saudi riyals) representing the arbitral tribunal fees borne by the claimant.

Third: An amount of SAR 20,000 (twenty thousand Saudi riyals) representing the attorney's fees incurred by the claimant in this case.

The Circuit also reviewed the evidence confirming the deposit of the arbitral award.

The Circuit then declared the closure of pleadings for deliberation and the pronouncement of judgment.

Reasoning

Based on the foregoing, and as the plaintiff seeks the annulment of the arbitral award rendered by the arbitrator [...] on May 12, 2024 (4/11/1445H) on the following grounds:

First: Nullity of the arbitration agreement

Second: Violation of public policy by the arbitral tribunal's decision

Third: The arbitral tribunal ruling on matters not covered by the arbitration agreement or the referral decision

After the Circuit considered the action, heard the parties, reviewed the judgment issued by this Circuit appointing an arbitrator in the dispute arising between the parties, and examined the arbitral award, the Circuit finds that the grounds raised by the plaintiff do not fall within any of the grounds set forth in Article 50 of the Arbitration Law which must be satisfied for an annulment action to be admissible.

With respect to the plaintiff's contention regarding the nullity of the arbitration agreement, such contention is rebutted by the plaintiff's consent to arbitration in the action requesting the appointment of an arbitrator pursuant to the abovementioned instrument issued by this Circuit.

As for the plaintiff's assertion that the arbitral tribunal's decision violates public policy, no such violation is apparent to the Circuit.

As for the plaintiff's assertion that the arbitral tribunal ruled on matters not encompassed by the arbitration agreement by ruling on attorney's fees, this argument is also rejected. The claim for attorney's fees arises from the original case considered by the arbitral tribunal and is therefore ancillary to the original claim and falls within the jurisdiction of the arbitral tribunal pursuant to Article 5 (3) of the Law of Civil Procedure.

Furthermore, Article 50 (4) of the Arbitration Law provides, "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."

Accordingly, the Circuit concludes that the annulment action must be rejected and that the arbitral award must be upheld.

Article 51 [(2)] of the Arbitration Law provides: "If the competent court approves the arbitration award, it shall order its execution and its decision shall be non-appealable."

Thus, given that the arbitral award is upheld, the Circuit rules to order its enforcement.

Ruling

The Circuit rules as follows:

First: To reject the plaintiff's action seeking the annulment of the arbitral award rendered May 12, 2024 (4/11/1445H) by the arbitrator [...], which provides as follows:

The respondent, [...], Civil Registry No. [...], is ordered to pay the claimant the following:

First: An amount of SAR 69,000 (sixty-nine thousand Saudi riyals) for the rights arising from the contract.

Second: An amount of SAR 7,500 (seven thousand five hundred Saudi riyals) representing the arbitral tribunal fees borne by the claimant.

Third: An amount of SAR 20,000 (twenty thousand Saudi riyals) representing the attorney's fees incurred by the claimant in this case.

Second: To uphold the aforementioned arbitral award and order its execution.

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