

Qatar Court of Cassation  
Appeal Nos. 45 and 49 of 2014  
25 March 2014

Appeal No. 45-2014:

On 09.02.14, the Appellant appealed the Court of Appeal's decision in Appeal No. 826-2013 dated 15.12.13 asking that the Court of Cassation accept the filing of the appeal and, on the merits, vacate the decision of the Court of Appeal. The Appellant filed an explanatory memorandum at the same hearing. The Respondents were served notice of the appeal on 09.02.14. The appeal came before the Court of Cassation in chambers and was adjudged worthy of consideration and listed for hearing.

Appeal No. 49-2014:

On 13.02.14, the Appellants appealed the Court of Appeal's decision in Appeal No. 826-2013 dated 15.12.13 asking that the Court of Cassation accept the filing of the appeal and, on the merits, vacate the decision of the Court of Appeal and remand the matter to the Court of Appeal for a fresh decision by a different bench. The Appellants filed an explanatory memorandum at the same hearing. The Respondent was served notice of the appeal on 17.02.14 and on 24.02.14, the Respondent filed a defense memorandum seeking dismissal of the appeal. On 19.11.13, the appeal came before the Court of Cassation in chambers and was joined to the other appeal and listed for hearing. On 25.03.14, the appeals were heard before this Court as per the transcript of the hearing. The advocates for both sides confirmed their submissions and the Court set down the matter for decision today.

The Court

The Respondents (Appeal No. 45-2014) brought Action No. 56-2013 against the Appellant to set aside an arbitral award issued in the State of Qatar by an arbitrator who was appointed by ICC, Paris rules pursuant to the parties' agreement that ICC Rules would apply to their arbitration. The Respondents argued that the award was not issued in the name of HH The Emir of Qatar and did not include a submission agreement. The Court of First Instance set aside the award. The Appellant appealed in Appeal No. 826-2013 and on 10.12.13, the Court of Appeal affirmed the first instance decision and remanded the case to the arbitrator who issued the award for reconsideration. The Appellant appealed in Cassation Appeal No. 45-2014 as did the Respondents in Appeal No. 49-2014. The appeals came before this Court in chambers and were listed for hearing. At the hearing, the Court directed that the second appeal be joined to the first appeal. The appeal of decisions is a matter of public policy which the Court would determine of its own motion even if not raised by any of the parties. Since rules of civil procedure pertain to public policy, the Court of Cassation must ensure that they are followed. The Court of Appeal has upheld the Court of First Instance's decision to set aside the arbitral award and remand the case back to the arbitrator who issued the award. Being a final decision concluding the matter in controversy between the parties

involving the setting aside of the award, the Court of Appeal's decision may be appealed to the Court of Cassation as there are no further issues to be determined at either tier of the trial court system.

Appeal No. 45-2014:

The Appellant contends that the Court of Appeal erred in upholding the Court of First Instance's decision to set aside the arbitral award on the ground that it was not issued in the name of HH The Emir of Qatar. The arbitrator in question was appointed by the ICC under its rules and in accordance with the terms of the submission agreement. The award was procedurally valid under ICC rules. Furthermore, under the New York Convention on the Recognition & Enforcement of Foreign Arbitral Awards to which the State of Qatar has acceded, an award shall be recognized even if not issued in the form of judgments of the country where the arbitration took place as this is only a condition for enforcement.

Court of Cassation's Response:

**Accepted:** Article 190 of the Civil Procedure Law states: "In an arbitration agreement ("Special Arbitration Deed"), one may agree to arbitration in a particular dispute. Likewise, one may agree to arbitrate all disputes arising out of the performance of a particular contract." Article 192(1) states: "The conclusion of an arbitration clause entails waiver, by the parties, of their right of recourse to the court having original jurisdiction over the dispute." Article 200 states: "The arbitrators shall make their award on the basis of the arbitration agreement." The arbitral tribunal is not bound by the rules of civil procedure for Article 192 (sic) states: "The arbitrators shall make their award without being bound by the procedures foreseen in this Law, except those foreseen in the present chapter."

This means that the legal regime applicable to arbitration is based on the parties' assent and agreement to arbitration as a means of resolving any or all disputes which have arisen or may arise out of a specific legal relationship between them, by contract or otherwise. It is the parties' intent that maintains arbitration and determines its scope in terms of issues, governing law, composition and powers of the arbitral tribunal, arbitration proceedings etc. Arbitration is an exceptional method to resolve disputes in the place of conventional litigation and the security it affords. The right to arbitration is enshrined in law which allows, exceptionally, the ouster of court jurisdiction.

Under clauses 20, 21 of the contract, the parties agreed that any dispute arising between them in connection with the contract shall be finally settled through Qatar arbitration conducted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce subject to the terms of contract being governed by and construed in accordance with the laws of the State of Qatar.

Hence, the parties chose, as the governing law for their arbitration, the rules of the ICC, Paris while the arbitration would be conducted in the State of Qatar with the contract

being governed by Qatari law only for the purpose of its construal and interpretation. Under Article I & II of the New York Convention which became effective once Qatar enacted Emiri Decree No. (29) of 2003 on 15.03.03, each state party to the New York Convention has an obligation to recognize and enforce foreign arbitral awards based on the procedural rules enshrined in its domestic law. Those rules do not include provisions relating to the form and content of arbitral awards. The legislator ensured that this was reflected in Article 204 of the Civil Procedure Law which states: “An arbitral award is enforceable only by virtue of an order issued by the judge of the court where the original copy of the award was lodged, upon request of any of the parties concerned. The judge ordering execution shall have jurisdiction over all matters appertaining to the execution of the award.”

The Court of Appeal went against this approach by setting aside the arbitral award issued under ICC rules for not being issued in the name of HH The Emir of the State of Qatar when the award, as explained earlier, is not subject to the Qatari Civil Procedure Law save to the extent of its enforcement in the State of Qatar.

The Court of Cassation found the appealed decision in sufficient error to be vacated without considering the other grounds of appeal and remanded the case to the Court of Appeal.

Appeal No. 49-2014:

In twin appeals, consolidated for a single decision, vacating the appealed decision in either appeal would conclude the controversy in the other appeal. The Court of Cassation accordingly dismissed Appeal No. 49-2014 for having come to an end. The deposit was not forfeited as the decision in the proceeding did not fall under subparagraph 1 of Article 23 of the Civil Procedure Law.