

US \$1 billion award against Libya annulled by the Cairo Court of Appeal

by **Krystal Lee**, Stephenson Harwood, with thanks to Ibrahim Shehata at Shehata & Partners for providing a translation of the Arabic judgment

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In *Mohamed Abdulmohsen Al-Kharafi & Sons Co v Libya & Ors*, the Cairo Court of Appeal annulled an arbitral award in relation to a dispute between a Kuwaiti company Mohamed Abdul-Mohsen Al-Kharafi and the Libyan government.

The Cairo Court of Appeal has annulled an award relating to a dispute between the Kuwaiti company Mohamed Abdul-Mohsen Al-Kharafi (Al-Kharafi) and the Libyan government regarding a touristic investment project in Tripoli.

Plans for the project were finalised in a contract pursuant to which Libya was to provide approximately 24 hectares of land. The investment value was slated to be US\$130 million and included obligations on Libya to guarantee that the designated area was free of any physical or legal obstructions throughout a concession period of 90 years. During this time, Al-Kharafi was to assume control of the land, including any financing and operation of facilities such as hotels and restaurants.

The Libyan authorities failed to resolve obstructions to Al-Kharafi assuming control of the land and, in 2009, they proposed an alternative location. This was rejected by Al-Kharafi, who wished to proceed according to the contract. When the Minister of Finance terminated the contract without notice in 2010, Al-Kharafi commenced arbitration in accordance with the arbitration clause in the contract, which provided for disputes to be referred to arbitration under the Unified Agreement for the Investment of Arab Capital in Arab States. The Cairo Regional Center for Commercial Arbitration Rules were applicable and the seat was Cairo.

In 2013, the tribunal issued an award of more than US\$1 billion in Al-Kharafi's favour. Libya challenged the award on several occasions before it was put before the Cairo Court of Appeal for the third time in this appeal.

The Court of Appeal annulled the award stating that the remedy granted was "very aggravating, and utterly unjust... exceed[ing] the damage in an obvious way, inappropriate, and unexplainable" (according to the English translation of the judgment). The court held that expert evidence provided during the arbitration on the quantum of compensation for loss of profits was inaccurate and unjustifiable because information and data were purportedly provided by Al-Kharafi alone.

This may be a surprising decision since Egypt is often viewed as a relatively pro-arbitration jurisdiction with minimal curial intervention. If appealed, the case may be heard once again by the Cour de Cassation, which may provide more clarity on the interpretation of public policy in Egypt for enforcing arbitral awards.

Case: *Mohamed Abdulmohsen Al-Kharafi & Sons Co v Libya & Ors* (3 June 2020).

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