

# The judge presented

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In the name of God, the most gracious, the most merciful

In the name of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Ruler of Dubai

Court of Cassation

At the public session held on 21-04-2022 at the Court of Cassation in Dubai

In appeal No. 109 of 2022, civil appeal

:Appellant

.J.M.E

:Appealed against

.T. A. T. L. A

:The contested ruling

Appeal No. 2021/11, Appeal Order on Civil Petition dated 09-02-2022

I issued the following ruling

After reviewing the documents and hearing the summary report prepared and read by the presiding judge, Mr. Ahmed Ibrahim Saif, and the pleadings, and after deliberation. The facts, as evidenced by the appealed judgment and other documents, are as follows: The respondent company filed a petition against the appellant, registered under number 2020/48, order on petition for enforcement, with the execution judge, requesting ratification of the arbitration award issued by the International Centre for Dispute Resolution of the American Arbitration Association in case number 8771/0001/19/01, and ordering its enforcement and the placement of the enforcement formula on it, based on the fact that, according to the mutual non-disclosure agreement signed between them and dated 04/06/2015, which included an agreement to settle any dispute arising from its implementation through arbitration, it resorted to arbitration and obtained the award for which enforcement is sought. On 20/6/2021, the judge issued his decision authorizing the placement of the enforcement formula and opening an enforcement file, and the procedures were observed. The appellant appealed this order in appeal number 2021/11, order on petition, civil, and on 29/9/2021, the court ruled that the right to appeal had lapsed. The appellant challenged this ruling in Appeal No. 336/2021, and on November 11, 2021, the Court of Cassation overturned the appealed ruling and referred the case back to the Court of Appeal for a new ruling. This was based on the principle that the appeal period for an order to enforce foreign judgments and arbitral awards issued in a foreign country is thirty days. Since the overturned ruling based its decision on the lapse of the right to appeal due to its being filed after the deadline (ten days), it is flawed and must be overturned. After the case was referred back to the Court of Appeal, it was registered under the same previous appeal number. On February 9, 2022, the court upheld the appealed order. The appellant

challenged this ruling in the present appeal by filing a petition with the Case Management Office on March 4, 2022, requesting its reversal. The respondent's lawyer submitted a memorandum of defense within the prescribed time limit, requesting the dismissal of the appeal. The appeal has met all formal requirements. The appellant argues that the appealed judgment is flawed due to a violation of the law and an error in its application. Article 3 of the 1958 New York Convention, to which the United Arab Emirates is a party, states that enforcement shall be carried out in accordance with the rules of procedure followed in the territory where enforcement is requested. It is evident from the copy of the arbitration award in question that the sole arbitrator signed the last page of the award, separate from the reasons for the award or part thereof, in violation of Article 41/3 of Law No. 6 of 2018 on Arbitration, which requires the arbitrators to sign the arbitration award (reasons and operative part). This is a matter related to public order, which renders the judgment defective and warrants its reversal. This objection is well-founded, as the provisions of Articles 1 and 2 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards – to which the United Arab Emirates acceded by Federal Decree No. (43) of 2006 and which became effective legislation therein – stipulate that each contracting state recognizes the validity of foreign arbitral awards and undertakes to enforce them in accordance with its rules of civil procedure as defined by its domestic law, unless the party against whom the award was rendered proves the existence of one of the five cases exhaustively listed in Article 5 of the Convention, which states that: (1) Recognition and enforcement of an award may not be refused at the request of the party against whom the award is invoked unless that party presents to the competent authority in the country where recognition and enforcement are sought evidence that: a-..... (2) The competent authority in the country where recognition and enforcement of an arbitral award is sought may refuse recognition and enforcement if it finds that: a-.....: b- that recognizing or enforcing the arbitral award would be contrary to public order in that country, and that the meaning of Article 3 of the 1958 New York Convention is that enforcement shall be carried out in accordance with the rules of procedure in force in the territory where enforcement is sought, taking into account the most lenient procedures and excluding the most stringent ones. The term "rules of procedure" in the treaty refers to any law that regulates the procedures in the litigation and the enforcement of the awards issued therein. Therefore, it is not limited to the general procedural law, which is the Civil Procedure Law and its amended implementing regulations, but includes any procedural rules for the litigation and the enforcement of its awards contained in any other law that regulates such procedures. To argue otherwise is an unwarranted restriction. Arbitration Law No. 6 of 2018 was issued concerning arbitration, including the procedural rules specific to arbitration from its inception to its conclusion. The full enforcement of arbitral awards is a procedural law falling under the term "rules of procedure" as stipulated in the 1958 New York Convention. According to Article 41, Paragraph 3 of the aforementioned Arbitration Law, the arbitrator's signature is among the required elements of an arbitral award. This signature is the sole legal proof of the arbitrator's existence, as without it, the award cannot be attributed to the arbitrator. An arbitral award comprises both its operative part and its reasoning. Therefore, the arbitrators must sign both the operative part and the reasoning; otherwise, the award is void. This nullity pertains to public order and may be raised for the first time before this court. Given this, and considering that the copy of the arbitral award in dispute—submitted in the respondent's document file attached to the application for enforcement—bears a signature attributed to the arbitrator on the final page containing the operative part but lacks any part of the reasoning, the legislator's intent in requiring the arbitrator's signature on the award and establishing its issuance by him is not fulfilled. Consequently, the arbitral award in dispute does not meet the requirements for an enforcement order. Furthermore, the award contravenes... The appellant, having upheld the execution judge's decision to affix the enforcement order to the disputed arbitration award, has therefore violated the law and erred in its application. This necessitates the reversal of the decision for this reason alone, without the need to examine the remaining grounds of appeal. Since this is the second appeal, the court will adjudicate the dispute pursuant to paragraph (c) of Article 19 of Law No. 13 of 2016 concerning the Judicial Authority in the Emirate of Dubai. Therefore, the appealed order must be overturned, and a new ruling issued rejecting the affixation of the enforcement order to the disputed arbitration award. For these reasons, the court ruled: to reverse

the appealed judgment and order the respondent to pay costs and two thousand dirhams in attorney's fees; and, on the merits of the appeal, to overturn the appealed order and rule anew rejecting the affixation of the enforcement order to the disputed arbitration award and ordering the respondent to pay costs for both levels of litigation. B- That recognizing or enforcing an arbitral award violates public order in this country, and that the meaning of Article 3 of the 1958 New York Convention is that enforcement shall be carried out in accordance with the rules of procedure in force in the territory where enforcement is sought, taking into account the most lenient procedures and excluding the most stringent ones. The term "rules of procedure" in the Convention refers to any law that regulates the procedures in the dispute and the enforcement of the resulting awards. Therefore, it is not limited to the general procedural law, namely the Civil Procedure Law and its amended implementing regulations, but includes any procedural rules for the dispute and the enforcement of its awards contained in any other law that regulates such procedures. To argue otherwise is an unwarranted interpretation. Arbitration Law No. 6 of 2018, concerning arbitration, was issued, including the procedural rules specific to arbitration from its inception until the full enforcement of arbitral awards. In this respect, it is a procedural law that falls within the scope of the term "rules of procedure" in the provisions of the 1958 New York Convention. It is stipulated, according to paragraph 3 of Article 41 of the aforementioned Arbitration Law, that among the information that must be included in the arbitrator's award is the signature of the arbitrator. The arbitration was considered in light of the fact that this signature is the only document that legally proves the existence of the arbitrator, and without it it cannot be attributed to the arbitrator. The arbitration award is intended to be its operative part and its reasoning. Therefore, it is necessary for the arbitrators to sign the operative part of the award and the reasoning, otherwise the award is void, and this voidness is related to public order and may be raised for the first time before this court. Since that was the case, and the copy of the arbitration award in dispute - submitted in the file of documents of the respondent attached to the petition for the order - bears a signature attributed to the arbitrator on the last page containing the operative part but without any part of the reasoning, this does not achieve the legislator's purpose in requiring the arbitrator to sign the award and to say that this award was issued by him. Therefore, the arbitration award in dispute does not meet the conditions for ordering its execution. Since the appealed judgment contradicted this view and upheld the decision of the execution judge to place the execution formula on the arbitration award in dispute despite that, it has violated the law and erred in its application, which necessitates its reversal for this reason without the need to examine the rest of the grounds of appeal. Since this is the second appeal, the court will adjudicate the dispute pursuant to paragraph (c) of Article 19 of Law No. 13 of 2016 concerning the Judiciary in the Emirate of Dubai. Therefore, the appealed order must be overturned, and a new ruling issued rejecting the application for enforcement of the disputed arbitration award. For these reasons, the court ruled: to overturn the appealed judgment and order the respondent to pay costs and two thousand dirhams in attorney's fees; and, on the merits of the appeal, to overturn the appealed order and rule anew rejecting the application for enforcement of the disputed arbitration award and ordering the respondent to pay costs for both levels of litigation. B- That recognizing or enforcing an arbitral award violates public order in this country, and that the meaning of Article 3 of the 1958 New York Convention is that enforcement shall be carried out in accordance with the rules of procedure in force in the territory where enforcement is sought, taking into account the most lenient procedures and excluding the most stringent ones. The term "rules of procedure" in the Convention refers to any law that regulates the procedures in the dispute and the enforcement of the resulting awards. Therefore, it is not limited to the general procedural law, namely the Civil Procedure Law and its amended implementing regulations, but includes any procedural rules for the dispute and the enforcement of its awards contained in any other law that regulates such procedures. To argue otherwise is an unwarranted interpretation. Arbitration Law No. 6 of 2018, concerning arbitration, was issued, including the procedural rules specific to arbitration from its inception until the full enforcement of arbitral awards. In this respect, it is a procedural law that falls within the scope of the term "rules of procedure" in the provisions of the 1958 New York Convention. It is stipulated, according to paragraph 3 of Article 41 of the aforementioned Arbitration Law, that among the information that must be included in the arbitrator's award is the signature of the arbitrator. The arbitration

was considered in light of the fact that this signature is the only document that legally proves the existence of the arbitrator, and without it it cannot be attributed to the arbitrator. The arbitration award is intended to be its operative part and its reasoning. Therefore, it is necessary for the arbitrators to sign the operative part of the award and the reasoning, otherwise the award is void, and this voidness is related to public order and may be raised for the first time before this court. Since that was the case, and the copy of the arbitration award in dispute - submitted in the file of documents of the respondent attached to the petition for the order - bears a signature attributed to the arbitrator on the last page containing the operative part but without any part of the reasoning, this does not achieve the legislator's purpose in requiring the arbitrator to sign the award and to say that this award was issued by him. Therefore, the arbitration award in dispute does not meet the conditions for ordering its execution. Since the appealed judgment contradicted this view and upheld the decision of the execution judge to place the execution formula on the arbitration award in dispute despite that, it has violated the law and erred in its application, which necessitates its reversal for this reason without the need to examine the rest of the grounds of appeal. Since this is the second appeal, the court will adjudicate the dispute pursuant to paragraph (c) of Article 19 of Law No. 13 of 2016 concerning the Judiciary in the Emirate of Dubai. Therefore, the appealed order must be overturned, and a new ruling issued rejecting the application for enforcement of the disputed arbitration award. For these reasons, the court ruled: to overturn the appealed judgment and order the respondent to pay costs and two thousand dirhams in attorney's fees; and, on the merits of the appeal, to overturn the appealed order and rule anew rejecting the application for enforcement of the .disputed arbitration award and ordering the respondent to pay costs for both levels of litigation

## نشر الأحكام Empty heading

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

باسم صاحب السمو الشيخ محمد بن راشد آل مكتوم حاكم دبي

محكمة التمييز

بالجلسة العلنية المنعقدة يوم 2022-04-21 بمقر محكمة التمييز بدبي

في الطعن رقم 109 لسنة 2022 طعن مدني

طاعن:

ج. م. ا.

مطعون ضده:

ت. ا. ب. ل. ا.

الحكم المطعون فيه:

الصادر بالاستئناف رقم 2021/11 استئناف أمر على عريضة مدني بتاريخ 2022-02-09

أصدرت الحكم التالي

بعد الاطلاع على الأوراق وسماع تقرير التلخيص الذي أعده وتلاه جلسة المرافعة السيد القاضي المقرر /أحمد ابراهيم سيف والمرافعة وبعد المداولة. وحيث إن الوقائع على ما يبين من الحكم المطعون فيه وسائر الأوراق تتحصل في أن الشركة المطعون ضدها تقدمت ضد الطاعنة بطلب على عريضة قيد برقم 48 / 2020 أمر على عريضة صيغة تنفيذية إلى قاضي التنفيذ وذلك بطلب المصادقة على حكم التحكيم الصادر من المركز الدولي لتسوية المنازعات الجمعية الأمريكية للتحكيم في القضية رقم 01/ 19 / 0001/ 8771 والأمر بتنفيذه ووضع الصيغة التنفيذية عليه على سند من أنه بموجب اتفاقية عدم الإفصاح المتبادل الموقعة بينهما والمؤرخة في 04/06/2015 والتي تضمنت الاتفاق على تسوية أي نزاع ينشأ عن تنفيذها عن طريق التحكيم ، وقد لجأت إلى التحكيم وتحصلت على الحكم المطلوب وضع الصيغة التنفيذية عليه ، وبتاريخ 20/6/2021 أصدر القاضي قراره يصرح بوضع الصيغة التنفيذية وفتح ملف تنفيذ وتراعى الاجراءات، استأنفت الطاعنة هذا الأمر بالاستئناف رقم 11 / 2021 أمر على عريضة مدني، وبتاريخ 29/9/2021 قضت المحكمة بسقوط الحق في الطعن بالاستئناف ، طعنت الطاعنة في هذا الحكم بالتمييز رقم 336/2021 وبتاريخ 11/11/2021 قضت المحكمة بنقض الحكم المطعون فيه وبإحالة الدعوى إلى محكمة الاستئناف لتقضى فيها من جديد تاسيسا على ان مدة استئناف الامر بوضع الصيغة التنفيذية على الاحكام الأجنبية واحكام المحكمين الصادرة في بلد اجنبي والامر بتنفيذها تكون ثلاثون يوما. واذ أقام الحكم المنقوض قضاءه بسقوط الحق في الاستئناف لتقديمه بعد الميعاد (عشرة ايام) فانه يكون معيبا مما يوجب نقضه . وبعد إحالة الدعوى إلى محكمة الاستئناف قيدت بذات رقم الاستئناف السابق وبتاريخ 9/2/2022 قضت المحكمة بتأييد الأمر المستأنف طعنت الطاعنة في هذا الحكم بالتمييز المائل بموجب صحيفة أودعت مكتب إدارة الدعوى بتاريخ 4/3/2022 طلبت فيها نقضه . قدم محامي المطعون ضدها مذكرة بدفاعها خلال الميعاد طلب فيها رفض الطعن . وحيث ان الطعن استوفى اوضاعه الشكلية . وحيث انه مما تتعاه الطاعنة على الحكم المطعون فيه مخالفة القانون والخطأ في تطبيقه ذلك ان المادة الثالثة من اتفاقية نيويورك لعام 1958 المنضمة لها دولة الإمارات ذكرت أن التنفيذ يتم طبقاً لقواعد المرافعات المتبعة في الإقليم المطلوب إليه التنفيذ وكان البين من صورة حكم التحكيم محل الدعوى ان المحكم الفرد قد قام بالتوقيع على الصفحة الأخيرة من الحكم فيما هو منفصل عن أسباب الحكم أو جزء منها بما يخالف نص المادة 41/3 من القانون رقم 6 لسنة 2018 بشأن التحكيم الذي أوجب توقيع المحكمين على حكم التحكيم ( الأسباب والمنطوق ) ، وهي من مسألة متعلقة بالنظام العام بما يعيب الحكم ويستوجب نقضه. وحيث إن هذا النعي في محله ، ذلك أن مؤدى نص المادتين الأولى والثانية من اتفاقية نيويورك الخاصة بالاعتراف وتنفيذ أحكام المحكمين الأجنبية - والتي انضمت إليها دولة الإمارات العربية المتحدة بموجب المرسوم الاتحادي رقم (43) لسنة 2006 وأصبحت تشريعاً نافذاً بها اعتراف كل دولة متعاقدة بحجية أحكام التحكيم الأجنبية و

التزامها بتنفيذها طبقاً لقواعد الإجراءات المدنية المتبعة بها التي يحددها قانونها الداخلي ، ما لم يثبت المحكوم ضده في دعوى تنفيذ حكم التحكيم توافر إحدى الحالات الخمس الواردة على سبيل الحصر في المادة الخامسة من الاتفاقية التي تنص على أن: (1) لا يجوز رفض الاعتراف وتنفيذ الحكم بناء على طلب الخصم الذي يحتج عليه بالحكم إلا إذا قدم هذا الخصم للسلطة المختصة في البلد المطلوب إليها الاعتراف والتنفيذ الدليل على: أ-..... (2) يجوز للسلطة المختصة في البلد المطلوب إليها الاعتراف وتنفيذ حكم المحكمين أن ترفض الاعتراف والتنفيذ إذا تبين لها: أ-..... ب- أن في الاعتراف بحكم المحكمين أو تنفيذه ما يخالف النظام العام في هذا البلد ، وأن مفاد نص المادة الثالثة من اتفاقية نيويورك لعام 1958 أن التنفيذ يتم طبقاً لقواعد المرافعات المتبعة في الإقليم المطلوب إليه التنفيذ مع الأخذ بالإجراءات الأكثر يسراً واستبعاد الإجراءات الأكثر شدة منها، والمقصود بعبارة قواعد المرافعات الواردة بالمعاهدة أي قانون ينظم الإجراءات في الخصومة وتنفيذ الأحكام الصادرة فيها وبالتالي لا يقتصر الأمر على القانون الإجرائي العام وهو قانون الإجراءات المدنية ولائحته التنظيمية المعدلة ، وإنما يشمل أي قواعد إجرائية للخصومة وتنفيذ أحكامها ترد في أي قانون آخر ينظم تلك الإجراءات والقول بغير ذلك تخصيص بلا مخصص، وإذ صدر قانون التحكيم رقم 6 لسنة 2018 بشأن قانون التحكيم متضمناً القواعد الإجرائية الخاصة بالتحكيم من بدايتها حتى تمام تنفيذ أحكام المحكمين وهو في هذا الخصوص قانون إجرائي يدخل في نطاق عبارة "قواعد المرافعات" الواردة بنصوص معاهدة نيويورك لعام 1958، ومن المقرر وفق ما تقضي به الفقرة الثالثة من المادة 41 من قانون التحكيم المشار إليه أن من بين البيانات التي يجب أن يشتمل عليها حكم المحكم توقيع المحكم الذي نظر التحكيم باعتبار أن هذا التوقيع هو السند الوحيد الذي يشهد بوجود المحكم من الناحية القانونية، ولأنه من دونه لا يمكن نسبته إلى المحكم، والمقصود بحكم التحكيم منطوقه وأسبابه، ولذلك فإنه يلزم توقيع المحكمين على منطوق الحكم والأسباب وإلا كان الحكم باطلاً، وهو بطلان متعلق بالنظام العام يجوز إثارته لأول مرة أمام هذه المحكمة ، لما كان ذلك، وكانت صورة حكم التحكيم محل النزاع - المقدمة بحافظة مستندات المطعون ضدها المرفقة بعريضة الأمر- تحمل توقيع منسوب إلى المحكم على الورقة الأخيرة التي بها المنطوق دون أي جزء من الأسباب ، مما لا يتحقق معه غرض المشرع من وجوب توقيع المحكم على الحكم والقول بصدور هذا الحكم عنه، ومن ثم يكون حكم التحكيم محل النزاع غير مستوف شروط الأمر بتنفيذه ، وإذ خالف الحكم المطعون فيه هذا النظر وأيد قرار قاضي التنفيذ بوضع الصيغة التنفيذية على حكم التحكيم محل النزاع رغم ذلك، فإنه يكون قد خالف القانون وأخطأ في تطبيقه مما يوجب نقضه لهذا السبب دون حاجة لبحث باقي أوجه الطعن. - وحيث ان الطعن للمرة الثانية فان المحكمة تتصدي للفصل في النزاع عملاً بالفقرة ج من المادة 19 من القانون رقم 13 لسنة 2016 بشأن السلطة القضائية في امارة دبي- ولما تقدم - يتعين إلغاء الامر المستأنف والقضاء مجدداً برفض وضع الصيغة التنفيذية على حكم التحكيم محل النزاع . فلهذه الأسباب حكمت المحكمة :- بنقض الحكم المطعون فيه وإلزام المطعون ضدها بالمصروفات ومبلغ ألفي درهم مقابل أتعاب المحاماة، وفي موضوع الاستئناف إلغاء الامر المستأنف والقضاء مجدداً برفض وضع الصيغة التنفيذية على حكم التحكيم محل النزاع وإلزام المستأنف ضدها بالمصروفات عن درجتي التقاضي.