

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0005
Case Number	ADGMCFI-2022-238
Name of Case	A6 v B6
Judge	Justice William Stone SBS KC
Date Issued	13 March 2023
Catchwords	Application to set aside arbitral award. ‘Opt in’ jurisdiction and applicable law where award is made outside ADGM. Whether application is time barred. Judicial reluctance to interfere with arbitral awards. Whether arbitration can be re-opened so evidence of a party can be considered by a new tribunal.
Cases Cited	Honeywell International Middle East Ltd v Meydan Group LLC [2014] EWHC 1344 Abu Dhabi Court of Cassation, Case No. 1383-2021
Legislation and Authorities Cited	Abu Dhabi Law No. 4 of 2013, as amended by Abu Dhabi Law No. 12 of 2020 (the “ADGM Founding Law”) – Article 13(8) ADGM Arbitration Regulations 2015 – Section 58 UAE Federal Law No. 6 of 2018 on Arbitration (the Federal Arbitration Law) – Articles 16, 53 and 54 UAE Federal Law No. 5 of 1985 on the Civil Transactions Law of the UAE (the “UAE Civil Code”) – Article 481
Executive Summary	This judgment considered an application by the Claimant to set aside an arbitral award issued in favour of the Defendant. The Court considered several key issues, including whether the Abu Dhabi Global Market Courts had jurisdiction based on the parties' agreement to ‘opt in’, which was confirmed by the Court. A central question was also which law applied, with the Court determining that, based on the facts of the case, the UAE Federal Law No. 6 of 2018 on Arbitration (the “ Federal Arbitration Law ”) governed the Claimant’s application, not the ADGM Arbitration Regulations 2015. The Court further found that the alleged irregularities

	<p>did not constitute grounds for setting aside the award under the Federal Arbitration Law, referencing a general judicial reluctance to interfere with arbitral awards. Finally, the Court rejected the Claimant's request to re-open the arbitration with a new tribunal as being unsustainable in law, and thus dismissed the Claimant's application, awarding costs to the Defendant.</p>
Overall Summary	<p>Background</p> <p>The Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) considers a dispute between A6 (the Claimant), a sub-contractor, and B6 (the Defendant), the main contractor, regarding a sub-contract for civil works and the erection of a steel structure at phase 1 of a project.</p> <p>Disputes arose concerning their respective obligations under the sub-contract. The sub-contract stipulated ICC arbitration in Abu Dhabi UAE, governed by the laws of the Abu Dhabi and the federal laws of the UAE.</p> <p>A6 commenced ICC arbitration on 5 March 2019. The arbitral tribunal issued a final award (the “Award”), awarding A6 a sum of USD 2,136,124.72 plus interest out of its total claim of over USD 30 million.</p> <p>Dissatisfied with the extent to which its claims were disallowed, A6 first applied to the Abu Dhabi Judicial Department Court of Appeal (the “Abu Dhabi Court of Appeal”) on 20 June 2022 to set aside the Award to the extent that the arbitral tribunal had disallowed its claims beyond the awarded amount pursuant to Articles 16 and 53 of UAE Federal Law No. 6 of 2018 on Arbitration (the “Federal Arbitration Law”).</p> <p>The Abu Dhabi Court of Appeal dismissed the application on 6 July 2022, holding it lacked jurisdiction and that jurisdiction rested with the ADGM Courts because the ICC branch office is in ADGM. A6 appealed this jurisdictional ruling to the Abu Dhabi Court of Cassation, which rejected the appeal and upheld the Abu Dhabi Court of Appeal judgment on 19 September 2022.</p> <p>Consequently, A6 filed an application with the ADGM Court on 13 October 2022, seeking to set aside the Award (partially), re-open the arbitration, and mandate a new tribunal to analyse its evidence, together with costs.</p> <p>Analysis</p> <p>The ADGM Court addressed several key issues:</p> <ol style="list-style-type: none"> 1. Jurisdiction: The Court accepted jurisdiction because both parties expressly agreed in writing to submit to its jurisdiction and 'opt in' under Article 13(8) of Abu Dhabi Law No. 4 of 2013 (as amended by Abu Dhabi Law No 12 of 2020). This agreement was sufficient to establish the Court's jurisdiction. 2. Applicable Law: The Court determined that the Federal Arbitration Law applies to A6's application. This is because the arbitration was seated in mainland Abu Dhabi, and the contractual governing law

	<p>specified UAE federal law. The ADGM Arbitration Regulations 2015 (the “ADGM Arbitration Regulations”) do not apply as they are predicated on the arbitration having its seat in the ADGM, which was not the case here.</p> <p>3. Time Bar: A6 argued for compliance with the 3-month period in the ADGM Arbitration Regulations. However, the Court found that since the ADGM Regulations do not apply, A6 could not rely on this time limit. Although A6 had initially filed proceedings in the onshore Abu Dhabi Courts within the 30-day period required by Article 54(2) of the Federal Arbitration Law, its argument regarding the time bar for the ADGM application based on the ADGM Regulations failed. The Court noted that “<i>what is less obvious is why compliance with such period should have become an issue, the application having been filed before the [Abu Dhabi] Court of Appeal within the 30 day period provided for in the Federal Arbitration Law</i>”.</p> <p>4. Grounds for Setting Aside: A6 alleged procedural irregularities, contraventions of public policy, and failure to allow full presentation of its case. The Court concluded that these allegations were not substantiated. The Court agreed with B6 that A6's grounds amounted to alleging factual and/or legal errors by the tribunal, which are not grounds for setting aside an award under the Federal Arbitration Law. The Court noted that judicial interference with arbitral awards is limited, citing jurisprudence from English law and the Abu Dhabi Court of Cassation, and that errors in assessing evidence or applying law do not permit setting aside an award under Article 53 of the Federal Arbitration Law.</p> <p>5. Sought Relief: A6 requested a partial set-aside, re-opening the arbitration, and appointment of a new tribunal. The Court found this relief was not available in law and therefore was rejected. There is no mechanism under either the Federal Arbitration Law or the ADGM Arbitration Regulations to 're-open' an arbitration after a final award is rendered - in principle either the award is set aside or it is not, and there can be no question of any 'halfway house'. Appointing a new tribunal solely to reconsider evidence that did not succeed in the initial arbitration is not possible.</p> <p>Conclusion</p> <p>The Court dismissed A6's application and costs were awarded to B6.</p>
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.