

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0015
Case Number	ADGMCFI-2023-013
Name of Case	A8 v B8
Judge	Justice William Stone SBS KC
Date Issued	26 June 2023
Catchwords	Recognition and enforcement of arbitral award. Construction of Article 13(14) of the ADGM Founding Law, as amended by Law No. 12 of 2020. Guide to amendments of ADGM Founding Law. ‘Executory formula’. Practice Direction 10.15.
Cases Cited	Attorney General v Barker [2000] EWHC 453 (Admin) A4 v B4 [2019] ADGMCFI 0007 Meydan Group LLC v Banyan Tree Corporate Pte Ltd CA-005-2014 (DIFC) A6 v B6 [2023] ADGMCFI 0005
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rule 38 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Sections 16 and 227(1) ADGM Arbitration Regulations 2015 – Sections 60 and 61 Abu Dhabi Law No. 4 of 2013, as amended by Abu Dhabi Law No. 12 of 2020 (the “ADGM Founding Law”) – Article 13 Practice Direction 10 – Paragraph 10.15 Guide to amendments to Article 13 of Abu Dhabi Law No. 4 of 2013 – Paragraphs 13 and 14 Memorandum of Understanding of 11 February 2018 between the ADJD and the ADGM Courts Concerning the Reciprocal Enforcement of Judgments – Article 12(a)

<p>Executive Summary</p>	<p>This judgment concerns the recognition and enforcement of an arbitral award. The Claimant, A8, sought to have an arbitral award recognised and enforced within the ADGM, while the Defendant, B8, challenged the ADGM Court's jurisdiction, arguing that the award could not be enforced in wider Abu Dhabi using the ADGM as a conduit. The Court granted the Claimant's application for recognition and enforcement <i>within</i> the ADGM, dismissing the Defendant's jurisdictional objection. However, the Court declined to affix the 'executory formula', which would have facilitated enforcement outside the ADGM, due to the mandatory restrictions in the Abu Dhabi Law No. 4 of 2013 (as amended by Abu Dhabi Law No. 12 of 2020).</p>
<p>Overall Summary</p>	<p>Background</p> <p>This Abu Dhabi Global Market ("ADGM") Court of First Instance (Commercial & Civil Division) judgment concerns two applications before the Court: (i) A8's arbitration claim seeking recognition and enforcement of an arbitral award dated 24 January 2023 (the "Award") against B8 pursuant to Section 60(1)(c) of the ADGM Arbitration Regulations 2015; (ii) and B8's application seeking a declaration pursuant to Rule 38 of the ADGM Court Procedure Rules that the Court does not have jurisdiction to try the claim, alternatively that the Court should not exercise any jurisdiction that it may have.</p> <p>The case arises from a contractual dispute between A8 and B8 that was resolved through arbitration by an ICC tribunal, resulting in the Award in favour of A8. Following the Award, A8 attempted to have it recognised and enforced in wider Abu Dhabi but was unsuccessful. Previous decisions by the Abu Dhabi Court of Appeal and the Abu Dhabi Court of Cassation (the "ADCC") had affirmed that the ADGM Courts held jurisdiction over appeals related to the arbitration, based on the significance of the ICC branch office within ADGM as the place of arbitration subject to ADGM Law. B8 later filed a 'Reversal Application' with the ADCC to reverse its judgment and stay enforcement of the Award, but this was dismissed by five senior judges of the ADCC, who confirmed the ADGM Courts' exclusive jurisdiction to hear and determine any challenge to the Award. A8 subsequently brought the recognition and enforcement application before the ADGM Court.</p> <p>Analysis</p> <p>A8 argued that Section 60(1)(c) of the ADGM Arbitration Regulations 2015 applies to the Award, which states that Part 4 of the Regulations covers <i>"all other arbitral awards which are sought to be recognised and enforced in the Abu Dhabi Global Market, irrespective of the State or jurisdiction in which they are made"</i>.</p> <p>Furthermore, A8 highlighted the mandatory language of Section 61(1) of the ADGM Arbitration Regulations 2015, which stipulates that such an award <i>"shall be recognised as binding within the Abu Dhabi Global Market"</i> and <i>"shall be enforced within the Abu Dhabi Global Market as if it</i></p>

	<p>were the judgment of the Court", unless grounds for refusal under Section 62 are met.</p> <p>B8 contended that A8's true aim was not enforcement <i>within</i> ADGM but facilitation of enforcement <i>outside</i> ADGM, arguing that Article 13(14) of the Abu Dhabi Law No. 4 of 2013 (as amended by Abu Dhabi Law No. 12 of 2020) (the "Amended Founding Law") prevents the use of the ADGM Courts as a "<i>conduit</i>" for awards seated outside ADGM.</p> <p>The Court also considered the possibility that B8 might not have assets within ADGM. However, the Court noted, citing authority, that the absence of assets within the jurisdiction, while potentially relevant to the exercise of discretion regarding execution, is not a barrier to enforcement itself, and an enforcement order can assist in asset tracing.</p> <p>The Court identified three key elements for consideration: the issue of recognition simpliciter, the issue of enforcement, and (as a corollary to the latter) the issue of the affixation or otherwise of the 'executory formula' to the Order that A8 seeks on its application to facilitate enforcement in other UAE Courts.</p> <p>Conclusion</p> <p>The Court dismissed B8's allegation of abuse of process by A8, finding that A8's application was a proper course of conduct following directions from other courts. The Court also dismissed B8's jurisdiction application, affirming its jurisdiction over the matter.</p> <p>The Court found no reason why the Award should not be recognised, stating it was minded to exercise its unfettered discretion to grant A8's application for recognition and enforcement of the Award within ADGM.</p> <p>The judgment notes that A8's primary purpose is facilitating execution in wider Abu Dhabi, given its prior inability to do so, which brings into focus whether the Court can extend recognition and enforcement to facilitate this through the 'executory formula'.</p> <p>The Court held that, in this case, it was not in a position to grant A8's request to affix the executory formula pursuant to Article 13(14) of the Amended Founding Law, which in the view of the Court does not permit factual circumvention of the law therein laid down, it being unequivocally stated that the enabling Article 13(13) "<i>shall not apply to a judgment or order rendered by the Global Market's Courts in respect of the recognition or enforcement of...(b) any arbitral award rendered by a tribunal where the seat is outside the Global Market</i>". Accordingly, the Court only granted an order recognising and enforcing the Award within ADGM.</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.