

JUDGMENT SUMMARY

Neutral Citation	[2026] ADGMCFI 0002
Case Number	ADGMCFI-2025-227 and ADGMCFI-2025-257
Name of Case	A23 v. B23 and Others A25 v. B25
Judge	Justice Paul Heath KC
Date Issued	13 January 2026
Catchwords	ADGM Arbitration Regulations 2015. Application to set aside arbitral award (Section 58). Application for recognition and enforcement of award (Section 61). Status of Termination Order (Section 46(a)). Distinction between “award” and “procedural order”. “Fair treatment” of parties (Section 33). Mandate of tribunal and whether <i>functus officio</i> . Death of a party to arbitral proceedings. Arbitrator disclosure obligations (Article 17(2) ICC Rules). Arbitrator impartiality and independence. Inordinate and inexcusable delay in pursuing arbitration proceedings.
Cases Cited	<p><i>A30 & Ors v E30 & Ors</i> [2025] ADGMCA 0002</p> <p><i>Cargill SrL Milan v P Kadinopoulos SA</i> [1992] 1 Lloyd’s Rep 1</p> <p><i>Enterprise Insurance Co Plc v U-Drive Solutions (Gibraltar) Ltd</i> [2016] EWHC 1301 (QB)</p> <p><i>Fletamentos Maritimos SA v Effjohn International BV (No. 2)</i> [1997] 2 Lloyd’s Rep 302 (CA) at 306.</p> <p><i>Halliburton Co v Chubb Bermuda Insurance Ltd</i> [2021] 2 All ER 1175 (UKSC)</p> <p><i>Tresoro Mining Corporation v Mercer Gold Corp (BC)</i> [2018] BCCA 160</p> <p><i>ZCCM Investment Holdings Plc v Kansanshi Holdings Plc & Anor</i> [2019] EWHC 1285 (Comm)</p>
Executive Summary	The Abu Dhabi Global Market (“ADGM”) Court of First Instance issued a judgment concerning two related applications: an application by A23 to set aside an arbitral Termination Order, and an application by D23 to

	<p>recognise and enforce an arbitral Costs Award. The Court dismissed A23’s application to set aside the Termination Order, ruling that the order did not constitute an "award" under the ADGM Arbitration Regulations 2015 and was therefore not susceptible to a set aside. The Court found no procedural irregularities or unfairness in the arbitration. The Court granted D23’s application to recognise the Costs Award, noting that A23 had failed to challenge it within the statutory three-month time limit.</p>
<p>Overall Summary</p>	<p>The dispute arose out of transaction documents entered into in May 2019 regarding the acquisition of shares in education institutions in Saudi Arabia. In February 2023, Claimants A23 and E23 commenced ICC arbitration proceedings against Defendants B23, C23, and D23. The arbitration was seated in the ADGM.</p> <p>There were procedural delays in the arbitration. Following the death of Claimant E23 in 2024, there was a lack of progress. A23 and E23 did not to communicate with the Tribunal for over nine months. Consequently, on 17 April 2025, the Arbitrator issued a Termination Order ending the proceedings due to "<i>inordinate and inexcusable delay</i>" by the Claimants which caused serious prejudice to D23. This order was made pursuant to section 46(a) of the ADGM Arbitration Regulations (the "Regulations").</p> <p>Subsequently, on 3 July 2025, the Arbitrator issued a Costs Award, ordering A23 and the late E23 to pay legal fees and expenses to D23. A23 applied to the Court to set aside the Termination Order, alleging procedural unfairness, while D23 applied to enforce the Costs Award.</p> <p>The Court’s analysis focused on four main issues:</p> <ol style="list-style-type: none"> 1. Arbitrator Disclosures: A23 alleged set aside of the Termination Order should be granted on the basis that the Arbitrator failed to disclose conflicts of interest regarding concurrent appointments and a past professional relationship with D23's counsel. The Court rejected this argument. The Court noted that the ICC Court had found the relationships did not raise justifiable doubts about impartiality, and had dealt with this concern in the course of the arbitration. The Court found that that there was no basis to A23’s complaint of procedural irregularity. 2. Status of the Termination Order: A central issue was whether the Termination Order constituted an "award" capable of being set aside under section 58 of the Arbitration Regulations. The Court held that the Termination Order was not an "award". Applying <i>ZCCM Investment Holdings Plc v Kansanshi Holdings Plc</i>, the Court found that the Termination Order was a procedural decision that did not finally dispose of the merits of the substantive claim. Because the order explicitly allowed A23 to reintroduce the same claims in

	<p>another proceeding, it did not have the finality required of an award. Therefore, the Court had no jurisdiction to set it aside.</p> <p>3. The "Fair Treatment" Rule: Even if the Termination Order were reviewable, the Court found no breach of the "<i>fair treatment</i>" rule under section 33 of the Arbitration Regulations. The Court noted that: (i) the Arbitrator provided ample opportunities for A23 to progress the case; (ii) A23 did not update the Tribunal on E23's death for months and waived the right to an oral hearing on the termination application; and (iii) the delays justified the Arbitrator's decision.</p> <p>4. Recognition of the Costs Award: Regarding the Costs Award, the Court noted that A23 failed to apply to set it aside within the three-month limit prescribed by section 58(2)(c) of the Regulations. Consequently, A23 was barred from relying on grounds for refusal of recognition as a defense. The Court found that, despite the issuance of the Termination Order, the Arbitrator was not <i>functus officio</i> on the question of costs and had powers to issue the Costs Award under section 46 of the Regulations.</p> <p>The Court dismissed A23's Set Aside Application, confirming that the Termination Order was effective, and could not be challenged as an arbitral award. The Court granted D23's Recognition Application, making the Costs Award binding and enforceable.</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.