

# **Kabab-Ji SAL (Lebanon) (Appellant) v Kout Food Group (Kuwait) (Respondent)**

**Case ID: 2020/0036**

## **Case summary**

### **Issue**

- (1) Whether the Court of Appeal erred in finding that the parties made an express choice of English law, and not an implied choice of French law, as governing their arbitration agreement;
- (2) Whether the Court of Appeal erred in applying the summary judgment test to a New York Convention claim which should proceed by way of a rehearing;
- (3) Whether the Court of Appeal erred in making a final determination refusing enforcement of the arbitration award.

### **Facts**

The appellant, a Lebanese company, entered into a Franchise Development Agreement with Al Homaizi Foodstuff Company ("AHFC"), a Kuwaiti company, as Licensee. In 2005 AHFC became a subsidiary of the respondent, Kout Food Group ("KFG"), following a corporate reorganisation. A dispute arose under the FDA which the appellant referred to arbitration before the International Court of Arbitration. The arbitration was only commenced against KFG, not AHFC.

The majority arbitrators found that KFG was bound by and in breach of the Franchise Development Agreement. The respondent applied to the Paris Cour d'Appel to have the Award set aside. Soon afterwards, the appellant issued proceedings in the Commercial Court in London for enforcement of the Award. The English court held that the governing law was English law, but that KFG was not a party and hence not in breach of the Franchise Development Agreement. It refused to make a final determination refusing enforcement pending determination of the proceedings before the Paris court. The Court of Appeal agreed that the governing law was English law, that KFG was not a party and not in breach but held that the court below should have made a final determination, and it made such determination. The appellant appeals against the Court of Appeal's judgment.

### **Judgment appealed**

[\[2020\] EWCA Civ 6](#)

### **Parties**

#### **Appellant(s)**

Kabab-Ji SAL (Lebanon)

#### **Respondent(s)**

Kout Food Group (Kuwait)

### **Appeal**

**Justices**

Lord Hodge, Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Leggatt

**Hearing start date**

30 June 2021

**Hearing finish date**

1 July 2021

**Watch hearing**

30 June 2021 [Morning session](#) [Afternoon session](#)

1 July 2021 [Morning session](#) [Afternoon session](#)

**Judgment details****Judgment date**

27 October 2021

**Neutral citation**

[2021] UKSC 48