

Session 27-06-2024

Second Defendant's Supporting Document

Exported on: Jul 10, 2024
By Amjad Raza

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1 13:53:43 change back to eu server
2 13:53:44 (2.17 pm)
3 14:17:45 chairperson: good everyone, everyone. as you know, this
4 14:17:47 is the hearing in matter diac 230179.
5 14:17:55 i'm jennifer kirby and i'm here with bill smith and
6 14:17:58 andrew mcdougall, we're your arbitral tribunal.
7 14:18:15 i just ask that if you are not speaking, please be
8 14:18:18 so kind as to mute your microphones just so that, you
9 14:18:23 know, we don't get any crossover in terms of
10 14:18:28 conversation.
11 14:18:35 mr bin touq, i understand that you're going to be
12 14:18:37 the principal speaker for claimant today. just by way
13 14:18:41 of formality, could you please introduce to us the other
14 14:18:45 people who are here for claimant today.
15 14:18:51 mr bin touq: yes, i'm obaid bin touq, and we have
16 14:18:53 hatem al amoudi from franklin morgan and we have
17 14:18:57 sager al sharhan and we have jassim al rafaei and lance
18 14:19:01 and saad al omeri.
19 14:19:06 chairperson: very good.
20 14:19:10 mr bin touq: and ali as a witness.
21 14:19:13 chairperson: yes.
22 14:19:13 ms habib, i understand that you'll be the principal
23 14:19:15 speaker for respondent today. can you please introduce
24 14:19:19 yourself and anyone else who's with you today for the
25 14:19:22 respondent, for the sake of formality.

1 14:19:26 ms habib: hi, my name is raheela, i'm a legal counsel for
2 14:19:28 the respondent, and mr jihad el haddad, senior legal
3 14:19:33 counsel, is with me to represent the respondents in
4 14:19:35 these proceedings.

5 14:19:37 chairperson: very good.

6 14:19:39 now, you have all received procedural order 2 which
7 14:19:44 has the provisional hearing agenda for today.
8 14:19:51 this is slated to be a relatively short hearing
9 14:19:53 today. we have the tribunal's opening remarks,
10 14:19:57 claimant's opening statement, followed by the
11 14:20:00 examination of witnesses or, as the case may be, just
12 14:20:04 one witness today.
13 14:20:06 we do foresee a break after that and then closing
14 14:20:09 statements from the parties, followed by discussion with
15 14:20:14 the tribunal.
16 14:20:18 now, perhaps we can just turn momentarily to this
17 14:20:24 issue that arose this morning, mr bin touq, with respect
18 14:20:29 to mr saad al sharhan and his ability or perhaps
19 14:20:34 inability to appear today.
20 14:20:36 could you please tell us a bit more about what's
21 14:20:38 happening there?
22 14:20:40 mr bin touq: yes, saad al sharhan, he have a cancer and
23 14:20:43 he's under treatment, and yesterday he's been admitted
24 14:20:47 to the hospital. he could not attend the hearing today.
25 14:20:56 chairperson: i see. okay. ms habib, would you like to

1 14:20:59 address this issue? do you have any comments on this
2 14:21:10 issue?
3 14:21:11 ms habib: we don't have any comments.
4 14:21:12 chairperson: no comments. okay.
5 14:21:13 so we will not be hearing from mr saad al sharhan
6 14:21:22 today, but we do of course still have mr erdogdu here,
7 14:21:28 so we will be able to have his examination today.
8 14:21:31 before we do that, are there any other matters of
9 14:21:35 a preliminary nature before we go to claimant's opening
10 14:21:38 statement? mr bin touq, is there anything from
11 14:21:42 claimant's side of a preliminary nature you would like
12 14:21:44 to raise?
13 14:21:47 mr bin touq: no.
14 14:21:48 chairperson: ms habib, is there anything on the
15 14:21:50 respondent's side of a preliminary nature that you would
16 14:21:52 like to raise?
17 14:21:54 ms habib: yes, i would like to draw tribunal's attention
18 14:21:57 to the email that i received today. my name was not
19 14:22:00 there. i was not copied. only mr -- it was
20 14:22:04 info@jihadelhaddad and case manager, so i was not copied
21 14:22:07 in that particular email.
22 14:22:09 so i request the tribunal to check into this matter,
23 14:22:14 like, respondent always -- should always cc my email
24 14:22:19 address. that's my request.
25 14:22:22 chairperson: okay. yes. mr bin touq, i did notice today

1 14:22:26 when the email came in that it was not copied to all of
2 14:22:31 respondent's email addresses. when i forwarded it,
3 14:22:35 i made sure that it was, so everybody has now
4 14:22:39 received it.
5 14:22:40 but it would be helpful just if --
6 14:22:47 mr bin touq: we will make sure going forward, ma'am.
7 14:22:49 chairperson: that would be very good.
8 14:22:51 mr bin touq: we apologise.
9 14:22:52 chairperson: that's fine. i assumed it was an oversight.
10 14:22:57 so with that, perhaps we can turn to claimant's
11 14:23:01 opening statement. we have foreseen 15 minutes for
12 14:23:06 claimant's opening statement.
13 14:23:09 mr bin touq, if you would like to proceed, please go
14 14:23:12 ahead.
15 14:23:13 opening submissions by mr bin touq
16 14:23:15 mr bin touq: yes. we are the company having an agreement
17 14:23:21 to appoint crc to develop their school, and a part of
18 14:23:27 the discussion and what they have been through, they
19 14:23:30 came with an agreement with the arbitration clause to
20 14:23:34 have them developing the school.
21 14:23:40 they have several discussion till they arrive to
22 14:23:44 that agreement. they have the loa and they have the
23 14:23:48 contract been signed and stamped by them, and now we are
24 14:23:54 having them not having any proper argument in terms of
25 14:24:00 why diac have no jurisdiction.

1 14:24:03 it's been very clearly stand on the contract and loa
2 14:24:08 which has been signed by them, that as per the diac
3 14:24:13 rules of 2022 and uae federal law of 2018, diac
4 14:24:20 arbitration clause been included in the contract.
5 14:24:24 as you instructed, that to make it very summary
6 14:24:29 about introduction, i would like to have the witness to
7 14:24:34 have his own statements and to carry on from there.
8 14:24:44 we already provide our memo and our standing on the
9 14:24:48 matter and we see the tribunal have jurisdiction to rule
10 14:24:55 over that and be very clearly stand in the loa and the
11 14:24:59 contract.
12 14:25:06 chairperson: do you have any further comments you would
13 14:25:08 like to make by way of opening at this point, mr bin
14 14:25:10 touq, or should we move to the examination of
15 14:25:15 mr erdogdu?
16 14:25:20 mr bin touq: we are fine with that.
17 14:25:21 chairperson: all right. with that, we can move to
18 14:25:23 mr erdogdu's examination.
19 14:25:27 we have allotted 30 minutes for this, even though
20 14:25:33 i know that, i do recall that respondent asked for
21 14:25:36 15 minutes, but we added some additional time, just in
22 14:25:40 case there's any re-direct, mr bin touq, that you may
23 14:25:43 wish to do or any questions from the tribunal. we just
24 14:25:47 wanted to have a little more wiggle room in the
25 14:25:51 schedule, if need be.

- 1 14:25:58 mr ali reso erdogdu
- 2 14:26:04 chairperson: mr erdogdu, we would like to swear you in as
- 3 14:26:08 a witness today. do you have a holy book for that
- 4 14:26:12 purpose?
- 5 14:26:15 witness: yes, i do.
- 6 14:26:17 chairperson: what holy book is that, please?
- 7 14:26:20 witness: it's quran.
- 8 14:26:21 chairperson: okay. would you be so kind as to put your
- 9 14:26:24 hand on the holy book, please.
- 10 14:26:28 witness: sure.
- 11 14:26:29 chairperson: if we can see, please. yes, okay.
- 12 14:26:33 if you would be so kind as to repeat after me,
- 13 14:26:36 please: i swear by the almighty god.
- 14 14:26:42 witness: by the almighty god.
- 15 14:26:43 chairperson: i'm sorry, sir. it's: i swear by the
- 16 14:26:46 almighty god.
- 17 14:26:47 witness: i swear by the almighty god.
- 18 14:26:50 chairperson: to say all the truth.
- 19 14:26:52 witness: to say all the truth.
- 20 14:26:54 chairperson: the whole truth.
- 21 14:26:55 witness: the whole truth.
- 22 14:26:57 chairperson: and nothing but the truth.
- 23 14:26:58 witness: and nothing but the truth.
- 24 14:27:02 chairperson: thank you, sir.
- 25 14:27:03 we have received, in these proceedings, a copy of

- 1 14:27:07 your cv, of your curriculum vitae, and we've also
2 14:27:13 received a statement, a written statement, from you
3 14:27:15 dated 28 april 2024.
4 14:27:19 do you confirm the accuracy of your cv?
5 14:27:24 witness: yes, ma'am, i do.
6 14:27:25 chairperson: and do you confirm the accuracy of the
7 14:27:28 statement you submitted dated 28 april 2024?
8 14:27:32 witness: yes, ma'am, i do.
9 14:27:34 chairperson: okay.
10 14:27:35 mr bin touq, do you want to have any direct with
11 14:27:41 this witness? if you do, it could be very brief,
12 14:27:45 five minutes or so, or are you content that we just pass
13 14:27:49 directly to cross-examination?
14 14:27:56 mr bin touq?
15 14:28:01 mr bin touq: start examine him, it's fine.
16 14:28:02 chairperson: the cross-examination can begin?
17 14:28:04 mr bin touq: yes.
18 14:28:04 chairperson: okay, very good.
19 14:28:05 ms habib, we've allotted 15 minutes for your
20 14:28:12 cross-examination, so if you'd be so kind, you can start
21 14:28:16 whenever you're ready.
22 14:28:19 cross-examination by ms habib
23 14:28:24 ms habib: so, mr ali?
24 14:28:31 a.yes.
25 14:28:31 q.i would like to ask you, my first question is what was

- 1 14:28:35 your involvement in the project?
- 2 14:28:40 a.okay. i am a civil engineer and i was the project
- 3 14:28:43 manager for the development of arbor school dubai.
- 4 14:28:47 q.so what was the duration of your being a project manager
- 5 14:28:51 on this project?
- 6 14:28:54 a.from february 2016 until the termination and after the
- 7 14:29:06 termination. i was with the company until 2022.
- 8 14:29:13 q.so is it right to say that you were involved in the
- 9 14:29:17 project from the beginning until the end, until the
- 10 14:29:20 termination?
- 11 14:29:21 a.correct.
- 12 14:29:21 q.and even after termination, you were involved with the
- 13 14:29:24 company?
- 14 14:29:25 a.correct.
- 15 14:29:27 q.so my question is, are you aware about the dubai court
- 16 14:29:32 proceedings that happened between the claimant and
- 17 14:29:34 respondent regarding this particular project? are you
- 18 14:29:37 aware?
- 19 14:29:38 a.yes, i am.
- 20 14:29:39 q.you're aware. okay. so are you also aware about the
- 21 14:29:43 outcome of the proceedings?
- 22 14:29:48 a.no, at the moment.
- 23 14:29:50 q.so you're not aware about the outcome?
- 24 14:29:54 a.i am not aware of the final stage of the court
- 25 14:29:58 proceedings.

1 14:29:59 q.so you're aware about the first stage of the court
2 14:30:01 proceeding that was the court of first instance? are
3 14:30:05 you aware about that judgment?
4 14:30:08 a.yes, yes.
5 14:30:09 q.so can you just clarify or can you just tell us what you
6 14:30:13 know about that particular judgment? what happened?
7 14:30:18 a.okay. as per our contract, the contractor should have
8 14:30:25 completed the project as requested on technical and
9 14:30:30 scheduled terms, but failed to do, so there were so many
10 14:30:35 reasons behind that and the contract was terminated
11 14:30:38 based on our contract. and very shortly, we had some
12 14:30:47 conflict with the contractor, a major one being they
13 14:30:52 have occupied an operating school during at the very
14 14:30:58 beginning of the first operational year of the school,
15 14:31:03 which was reported to the police.
16 14:31:08 then the court -- the legal proceedings -- many
17 14:31:15 legal proceedings have progressed.
18 14:31:21 q.okay. i will ask you next question. have you
19 14:31:31 participated in the proceedings before the experts
20 14:31:36 appointed by the court? have you ever attended any
21 14:31:40 expert proceedings?
22 14:31:43 a.please define the timing, which court and when? can you
23 14:31:47 please specify?
24 14:31:49 q.yes, court of first instance and court of appeal.
25 14:31:53 because on both stages, the experts were appointed. in

1 14:31:57 court of first instance, one expert was appointed, and
2 14:32:00 in the court of appeal, the tripartite experts were
3 14:32:03 appointed, three experts were appointed.
4 14:32:06 a.we were engaged during --
5 14:32:08 q.no, i'm asking -- sorry. i'm particularly asking about
6 14:32:12 you, whether you were personally involved in those
7 14:32:14 proceedings or not?
8 14:32:17 a.you mean attending the court cases? no. because all
9 14:32:22 the court hearings was in arabic and i can't speak
10 14:32:25 arabic.
11 14:32:25 q.no, i'm not talking about the court proceeding, but i'm
12 14:32:29 talking about the experts. because for experts, even if
13 14:32:32 you're not arabic person, you can attend before the
14 14:32:35 experts, because most of the experts are bilingual?
15 14:32:39 a.yes, they had visited our school in many occasions and
16 14:32:44 in that sense, yes, i was involved.
17 14:32:46 q.okay, you were involved.
18 14:32:48 i would like to draw your attention to your point
19 14:32:50 number 30, which says that -- in which you mention that
20 14:33:04 you have never been questioned by dubai experts. point
21 14:33:07 number 26.
22 14:33:10 a.i'm sorry, who?
23 14:33:12 q.see, in your point number 26 in your witness statement,
24 14:33:15 you have mentioned that:
25 14:33:18 "... i have never been questioned by any dubai court

1 14:33:21 experts, regarding the failures of the respondents."

2 14:33:25 a.correct, this is dubai court experts, meaning in a court

3 14:33:29 hearing. no. no, i haven't.

4 14:33:32 q.no, no. it's not the court hearings. it's the dubai

5 14:33:34 courts experts?

6 14:33:38 a.okay, we have been -- okay, we have been provided many

7 14:33:41 questions by the court and by the experts. my

8 14:33:46 involvement was preparing answers to those questions

9 14:33:51 with our legal team. that's what i mean i got involved

10 14:33:54 with dubai experts.

11 14:33:56 q.so it means that you have provided them answers of the

12 14:34:00 questions; right?

13 14:34:02 a.yes.

14 14:34:03 q.so it means that you were involved with these experts as

15 14:34:08 well -- directly or indirectly?

16 14:34:11 a.i have communicated with those experts, replying their

17 14:34:15 legal requests, yes.

18 14:34:19 q.yes.

19 14:34:20 a.through our lawyers, yes.

20 14:34:21 q.in your witness statement, when you mentioned:

21 14:34:23 "... i have never been questioned by any dubai court

22 14:34:25 experts ..."

23 14:34:26 it's misleading?

24 14:34:31 a.i took this question as i've never participated in any

25 14:34:36 court hearing and confronted any dubai experts in the

- 1 14:34:41 court, yes. my answer is based on that fact, yes.
- 2 14:34:51 q.so directly or indirectly, you were involved in those --
- 3 14:34:55 with these experts and you have provided your opinion
- 4 14:34:58 about what happened during this case?
- 5 14:35:03 a.correct.
- 6 14:35:04 q.yes?
- 7 14:35:05 a.correct.
- 8 14:35:05 q.so i would like to draw the attention of the tribunal
- 9 14:35:09 members that when, under point number 26, mr ali is
- 10 14:35:15 saying:
- 11 14:35:15 "... i have never been questioned by any dubai court
- 12 14:35:18 experts ..."
- 13 14:35:18 can we ask for amendment? because he has been and
- 14 14:35:22 he has confirmed also that directly or indirectly, he
- 15 14:35:25 has been involved and he has replied to the questions
- 16 14:35:28 raised by the experts.
- 17 14:35:32 chairperson: ms habib, it's not customary in an
- 18 14:35:38 arbitration setting to actually seek an amendment of
- 19 14:35:42 a witness statement. it's more that the witness has now
- 20 14:35:45 explained his testimony, he's explained his involvement
- 21 14:35:49 with the experts, and so we understand his testimony in
- 22 14:35:53 that context and we'll take that into account.
- 23 14:35:58 ms habib: okay. thank you, tribunal. thank you.
- 24 14:36:00 now my next question is -- mr ali?
- 25 14:36:08 a.yes.

- 1 14:36:08 q.the next question to you is regarding loa, letter of
2 14:36:12 acceptance. are you aware that this letter of
3 14:36:16 acceptance was signed in april 2017?
4 14:36:19 a.yes.
5 14:36:20 q.are you also aware that the contract was signed in
6 14:36:24 20 july 2017?
7 14:36:27 a.yes.
8 14:36:28 q.around three months after?
9 14:36:30 a.yes.
10 14:36:30 q.i would like to draw your attention to the contract.
11 14:36:38 i'm not sure whether you have a copy in front of you or
12 14:36:40 not. there is a clause 5.3(b), which says, "priority of
13 14:36:47 contract documents ..."
14 14:36:48 in this particular list, i can see that the contract
15 14:36:52 agreement is at first position, which means the highest
16 14:36:57 priority in this case should be given to the contract.
17 14:37:00 and the second number is loa.
18 14:37:04 the court has decided its case based on the
19 14:37:08 contract. so i just want to know one thing. are you
20 14:37:11 aware that this loa was never submitted before the
21 14:37:16 court?
22 14:37:18 a.i cannot -- i have to refer to my lawyers for the exact
23 14:37:22 submittal of those documents to the court.
24 14:37:25 q.can i tell you that the case was filed in 2018 and the
25 14:37:31 case actually ended in 2024. in last six years this loa

1 14:37:38 document, which you are saying that you have witnessed
2 14:37:42 our client signing this, has never been submitted by
3 14:37:45 your lawyers to the court.
4 14:37:48 so how now we can say that this loa has overnight
5 14:37:52 become so important that whatever happened in six years
6 14:37:56 should be set aside and we should just follow loa?
7 14:38:00 a.okay. my answer to that is i don't have the full exact
8 14:38:06 submission registers to the court, but i would be very
9 14:38:11 surprised if that loa has not been submitted to any
10 14:38:16 court hearing. so i --
11 14:38:19 q.this has been --
12 14:38:20 a.for six years -- just a second. for six years, i will
13 14:38:23 be surprised, which is a part of the contract, which is
14 14:38:26 not submitted to the court. because i know that, i'm
15 14:38:29 aware that there are many documents been submitted,
16 14:38:33 multiple times to the court, to the experts, and i will
17 14:38:37 be very surprised if loa is not included in those
18 14:38:40 submittals.
19 14:38:41 q.yes, but i would like to confirm, it has been confirmed
20 14:38:45 by the claimant in their submissions before this
21 14:38:49 tribunal that this loa was never submitted before the
22 14:38:52 court proceedings?
23 14:38:55 a.i have to refer to my lawyers for the exact document
24 14:38:58 register dating.
25 14:39:00 ms habib: okay.

1 14:39:16 mr el haddad: mr ali, so you said that you had been
2 14:39:16 participating, or been working in the company since the
3 14:39:17 beginning of the project --
4 14:39:19 chairperson: i'm sorry, mr el haddad, it's not
5 14:39:22 conventional to switch lawyers in the middle of
6 14:39:25 a cross-examination. what is happening here?
7 14:39:30 mr el haddad: no, actually, mrs kirby, i thought that we
8 14:39:34 are both representing the respondent. i will do
9 14:39:34 whatever you instruct, at the end of the day, but if you
10 14:39:40 allow me to ask a question.
11 14:39:43 chairperson: well, i think it would be best if the
12 14:39:48 cross-examination is handled by ms habib, so that we
13 14:39:52 don't double-team the witness with lawyers here
14 14:39:55 unexpectedly.
15 14:39:57 i think mr el haddad, if you have a question that
16 14:40:00 you would like asked, perhaps ms habib can ask it.
17 14:40:05 mr el haddad: sure, no problem.
18 14:40:07 ms habib: no problem. i will ask. thank you, tribunal.
19 14:40:11 yes, mr ali?
20 14:40:13 a.yes.
21 14:40:15 q.another question is, are you aware that various experts
22 14:40:19 examined the evidences submitted by us, by respondent,
23 14:40:24 and issued a report -- (overspeaking) --
24 14:40:30 a.please define what you mean by "experts". are they
25 14:40:35 court experts?

1 14:40:36 q.yes, the court-appointed experts have submitted two
2 14:40:40 reports in this matter. in the court of appeal they
3 14:40:43 have submitted -- requested by the claimant, the court
4 14:40:50 has appointed tripartite experts, which means that three
5 14:40:54 experts were appointed only on the request of the
6 14:40:58 claimant. that is your company, al mutatawera.
7 14:41:03 the court of appeal has accepted that particular
8 14:41:06 report as final. so are you aware about this report?
9 14:41:10 because you were answering those questions.
10 14:41:13 a.no. that's a general question. you have to be specific
11 14:41:16 which report, because i have to be -- i don't have the
12 14:41:20 full documents with me. i can answer this in writing to
13 14:41:24 the court. if you specify the exact date and refer to
14 14:41:28 the exact report, i will be able to give you an accurate
15 14:41:32 answer.
16 14:41:33 chairperson: one moment, one moment. i just want to
17 14:41:35 interject here. just so that we don't drive the court
18 14:41:38 reporter crazy, please be careful, ms habib and
19 14:41:45 mr erdogdu, please be careful not to talk over each
20 14:41:49 other, because it's very difficult for the court
21 14:41:52 reporter to take down correctly what's being said if two
22 14:41:57 people are talking at the same time.
23 14:41:58 i know it's natural in conversation for that to
24 14:42:00 happen, but here, please, please try to let each other
25 14:42:05 finish before you begin talking again, so that the

- 1 14:42:09 record is clean.
- 2 14:42:12 ms habib.
- 3 14:42:14 ms habib: yes. thank you, tribunal.
- 4 14:42:17 mr ali, if you like, i can give you the final expert report, which was given in the case number court of
- 5 14:42:21 appeal number 706/2021 and appeal number 1529. it was
- 6 14:42:26 submitted on 19 march 2023. if you like, i can give you
- 7 14:42:33 the engineers' names as well?
- 8 14:42:38 a.i am not aware of that report.
- 9 14:42:42 q.are you aware about the eng gassan masood(?) and eng sukriya saleem(?)?
- 10 14:42:44 a.no, i'm not. if this is 2023, i am not aware of that
- 11 14:42:47 report.
- 12 14:42:50 q.no, this is not 2023. this is the final expert report,
- 13 14:42:55 which was submitted in 2022.
- 14 14:42:55 a.i cannot answer that question. i have to see the
- 15 14:43:00 report. without seeing, i cannot answer that question.
- 16 14:43:04 q.are you aware that your company has given counterclaims
- 17 14:43:07 to the experts saying that our client has not completed
- 18 14:43:13 the project and there were some outstanding works? have
- 19 14:43:18 you done that?
- 20 14:43:22 a.yes.
- 21 14:43:27 q.if you have done that, does that mean that you have also
- 22 14:43:28 made the counterclaim? because the expert report
- 23 14:43:30 clearly states that you have made several counterclaims,
- 24 14:43:33
- 25 14:43:38

1 14:43:41 including 3.27 million, and then another one is
2 14:43:48 7.27 million, 1.58 million. so all these experts have
3 14:43:53 pointed out that these are the counterclaims or claims
4 14:43:58 that your company has made before the experts, seeking
5 14:44:03 the expert to give an expert report based on your
6 14:44:06 counterclaims and deduct our client's claim. are you
7 14:44:10 aware about this?
8 14:44:11 a.as a project manager, i have reviewed the works
9 14:44:16 completed, i have reviewed the balance of works and
10 14:44:20 i have quantified those pending, and there were defects.
11 14:44:28 i have worked in quantifying those incomplete and the
12 14:44:32 defects and any other monies referred to the contract
13 14:44:37 agreement. yes, i have been involved in those
14 14:44:41 calculations.
15 14:44:42 but as a whole, as a complete claim, a claim package
16 14:44:46 is discussed through our lawyers and submitted.
17 14:44:51 q.yes, i understand.
18 14:44:52 chairperson: ms habib, you're technically out of time
19 14:44:56 already, in terms of your 15 minutes. do you have --
20 14:45:01 ms habib: one more minute only.
21 14:45:02 chairperson: okay, yes. one more question. go ahead,
22 14:45:04 and then we'll wrap it up.
23 14:45:08 ms habib: mr ali, so you are confirming that you have
24 14:45:13 quantified your claim before the experts?
25 14:45:17 a.i am confirming what i just told you. i am a technical

1 14:45:22 project manager. i am aware of the bill of quantities
2 14:45:25 of the works and the variations and i have been involved
3 14:45:30 in reviewing, because we had an engineer, we had
4 14:45:35 a consultant. i reviewed the consultant's studies,
5 14:45:42 compared it with our contract and made our objections or
6 14:45:48 confirmations regarding the incomplete work and the
7 14:45:53 defective work.
8 14:45:55 q.so you have -- i would like to summarise that you have
9 14:46:00 quantified the damages sustained by your company and you
10 14:46:04 have presented these documents before the experts to
11 14:46:09 calculate the claims?
12 14:46:13 chairperson: ms habib.
13 14:46:15 ms habib: that's it.
14 14:46:16 chairperson: i was going to say, you're trying to sneak
15 14:46:17 in another question there. but we do have closing
16 14:46:21 statements, so obviously if you would like to give your
17 14:46:26 own summary or interpretation of the witness's answers,
18 14:46:31 you're free to do that during your closing statements.
19 14:46:34 but i think the witness's testimony was very clear and
20 14:46:38 we have that on the record.
21 14:46:40 so i think we can stop the cross-examination for
22 14:46:44 now.
23 14:46:46 mr bin touq, is there any re-direct examination that
24 14:46:50 you would like to do in light of respondent's
25 14:46:54 cross-examination?

- 1 14:46:57 mr bin touq: yes.
- 2 14:46:57 now, what we have today, we are discussing about the jurisdiction. ali was involved in the starting of the project, in term of negotiation and in terms of the progress of the project till its completion.
- 3 14:47:00
- 4 14:47:04
- 5 14:47:08
- 6 14:47:11 chairperson: i'm sorry, mr bin touq --
- 7 14:47:13 mr bin touq: i will ask ali couple of questions.
- 8 14:47:15 chairperson: okay, yes, go ahead, we have budgeted
- 9 14:47:18 five minutes.
- 10 14:47:20 re-examination by mr bin touq
- 11 14:47:22 mr bin touq: ali, are you involved on the discussion with
- 12 14:47:22 the contractor, regarding the loa and the contract?
- 13 14:47:26 a.yes.
- 14 14:47:28 q.are you aware that diac was a jurisdiction been
- 15 14:47:32 confirmed by the contractor and the consultant?
- 16 14:47:35 a.yes.
- 17 14:47:35 q.accepted by al mutatawera?
- 18 14:47:37 a.yes.
- 19 14:47:38 q.there was any revision or any changes toward that?
- 20 14:47:44 a.no.
- 21 14:47:46 q.you confirm that diac was only jurisdiction been
- 22 14:47:51 confirmed and accepted by signing the loa and stamp and
- 23 14:47:55 also the contract?
- 24 14:47:58 a.yes.
- 25 14:48:00 q.are you aware that who started the proceeding in dubai

- 1 14:48:03 court is al mutatawera or the contractor?
- 2 14:48:07 a.the contractor.
- 3 14:48:10 q.what was the main argument related to that? they
- 4 14:48:14 proceed in dubai court. however, they was aware that
- 5 14:48:17 the jurisdiction of arbitration was included in the loa
- 6 14:48:21 and the contract?
- 7 14:48:22 a.yes. they knew, they were aware that the jurisdiction
- 8 14:48:29 was the dubai arbitration, but the proceedings started
- 9 14:48:34 through dubai courts.
- 10 14:48:38 q.did you attend the signing of the loa and the contract?
- 11 14:48:42 a.yes.
- 12 14:48:44 q.you involved with the negotiation and the terms been
- 13 14:48:47 included that arbitration and diac was only jurisdiction
- 14 14:48:51 for this matter?
- 15 14:48:53 a.yes, and there were some pre-contract signatures,
- 16 14:48:58 communication with the contractors. so, yes, before the
- 17 14:49:04 contract signature, the contract draft was shared with
- 18 14:49:07 the contractor. they had some comments. we have the
- 19 14:49:09 communication and emails over that. yes, i was
- 20 14:49:14 involved.
- 21 14:49:14 q.did they involve any time the jurisdiction of the
- 22 14:49:16 agreement and any level under discussion?
- 23 14:49:21 a.no.
- 24 14:49:23 q.did any revision happen toward that clause on the
- 25 14:49:27 agreement?

- 1 14:49:28 a.no.
- 2 14:49:40 mr bin touq: okay.
- 3 14:49:40 chairperson: mr bin touq, do you have anything further?
- 4 14:49:43 mr bin touq: yes, we are fine. now, as per him as
- 5 14:49:45 a civil engineer, he's not aware on the legal proceeding
- 6 14:49:49 and what has been questioned to him by them is not
- 7 14:49:54 relevant, because he's only doing his engineering work
- 8 14:49:58 related to the matter and he's not aware about the legal
- 9 14:50:01 proceeding --
- 10 14:50:03 chairperson: mr bin touq, what i would propose is
- 11 14:50:06 similarly to what i said to ms habib. you do have your
- 12 14:50:08 closing statement to make.
- 13 14:50:11 mr bin touq: yes.
- 14 14:50:12 chairperson: so i think the points you're making now are
- 15 14:50:15 perhaps better addressed in that context.
- 16 14:50:18 mr bin touq: yes.
- 17 14:50:18 chairperson: for now, while we have the witness,
- 18 14:50:21 mr smith, do you have any questions for mr erdogdu?
- 19 14:50:42 mr smith: i don't have anything at the moment. i think
- 20 14:50:45 just to echo your comments, i think we'll just take the
- 21 14:50:56 witness's evidence as we heard it and anything else can
- 22 14:50:59 be dealt with in submissions.
- 23 14:51:03 chairperson: okay. very good.
- 24 14:51:06 witness: may i add something?
- 25 14:51:08 chairperson: not right now, mr erdogdu.

1 14:51:11 mr mcdougall, do you have any questions for the
2 14:51:14 witness?
3 14:51:16 mr mcdougall: i do, if i may.
4 14:51:17 chairperson: please.
5 14:51:18 questions by tribunal
6 14:51:19 mr mcdougall: nice to meet you, mr erdogdu. i'm andrew
7 14:51:21 mcdougall, i'm one of the members of the tribunal. can
8 14:51:25 you hear me okay?
9 14:51:26 a.yes, sir, nice to meet you too.
10 14:51:28 mr mcdougall: i was wondering if you could help us
11 14:51:30 understand just the way this contract was put into place
12 14:51:35 from your perspective.
13 14:51:37 why was there a letter, an loa as it's referred to,
14 14:51:42 a letter of acceptance, and then a contract document?
15 14:51:47 could you just explain to us how that came about in that
16 14:51:50 structure?
17 14:51:52 a.yes. the understanding was to commence the early works
18 14:51:56 and the mobilisation and the permitting for the school
19 14:52:01 project. so to earn -- it was basically kicking off the
20 14:52:07 early work. so within loa, we manage to apply for nocs
21 14:52:12 to the government institutions and there was a very
22 14:52:15 tight schedule, so it's mutually agreed with the
23 14:52:19 contractor that they can start some early works and some
24 14:52:23 early registrations. so based on that, loa came before
25 14:52:28 the contract, so we had an loa arrangement.

- 1 14:52:33 mr mcdougall: who drafted the loa, if you know?
- 2 14:52:40 a.i think we had -- it was by legal team. we drafted --
- 3 14:52:49 i can't fully recall, but it was exchanged a couple of
- 4 14:52:53 times for comments. so by a legal counsellor, it was
- 5 14:53:02 drafted.
- 6 14:53:03 mr mcdougall: were you involved in that process or not?
- 7 14:53:05 a.yes, i am.
- 8 14:53:07 mr mcdougall: what was your involvement?
- 9 14:53:09 a.just a -- yes, just a note. i particularly remember
- 10 14:53:15 installing the dubai arbitration clause into the
- 11 14:53:20 contract framework.
- 12 14:53:22 mr mcdougall: who installed that? you did or somebody
- 13 14:53:25 else?
- 14 14:53:25 a.i have discussed the ways, the correct ways to install
- 15 14:53:28 it with the legal team.
- 16 14:53:33 mr mcdougall: whose legal team?
- 17 14:53:34 a.it was our legal team. we have proposed. that's how
- 18 14:53:40 it's installed in the contract, yes, on the draft.
- 19 14:53:46 mr mcdougall: was there any resistance to that by the
- 20 14:53:48 other party?
- 21 14:53:51 a.as far as i recall, we have exchanged many emails
- 22 14:53:55 regarding the contract draft. we received some comments
- 23 14:53:59 from the contractor. as far as i recall, there is no
- 24 14:54:03 mention or any comments on that clause.
- 25 14:54:06 mr mcdougall: so then after the loa, you had the contract

1 14:54:09 as you mentioned. what was your involvement, if any, in
2 14:54:12 the contract drafting?
3 14:54:15 a.the contract was prepared by our consultant, national
4 14:54:18 engineering bureau, reviewed by both parties,
5 14:54:22 contractors and the investor's legal team. both parties
6 14:54:27 have put their comments on and the final contract
7 14:54:31 document was prepared.
8 14:54:35 mr mcdougall: what was your involvement?
9 14:54:37 a.i was, as the client -- as the investing side,
10 14:54:41 i reviewed the contract as per my experience on the
11 14:54:46 technical chapters regarding the schedule, the
12 14:54:49 deliveries, et cetera, on the contract.
13 14:54:57 mr mcdougall: i think that covers what i wanted to ask
14 14:54:59 you. thank you very much, madam president.
15 14:55:05 mr smith: madam president, can i just ask a follow-up,
16 14:55:07 just based on what mr mcdougall had asked -- sorry,
17 14:55:10 mr ali.
18 14:55:11 just to clarify, i think you said a minute ago in
19 14:55:15 response to the questions that you had installed
20 14:55:18 arbitration into the contract.
21 14:55:21 but my understanding is that that's a standard
22 14:55:24 provision in the general conditions, that were
23 14:55:27 incorporated by reference into the agreement.
24 14:55:30 are you saying that you -- or maybe i'll just ask
25 14:55:38 you directly. can you just explain what you meant by

1 14:55:41 you installed arbitration into the agreement?

2 14:55:43 a.installed, meaning -- okay, let me explain. install,

3 14:55:47 meaning receiving the draft from our consultant, we

4 14:55:49 proposed to install the dubai arbitration clause into

5 14:55:57 the contract. that was a proposal and i was involved

6 14:56:01 discussions with our legal team, to propose to install

7 14:56:05 that clause into the contract. so that's what i mean

8 14:56:07 "install".

9 14:56:10 mr smith: can i just probe that one more time, and this

10 14:56:12 is just for a matter of clarity. there's nothing

11 14:56:16 sinister about it. but what i'm saying is that in the

12 14:56:19 general conditions, arbitration is already there. so it

13 14:56:22 doesn't need to be installed. but are you saying that

14 14:56:25 in the special conditions, you've instructed the changes

15 14:56:29 to make it the diac, as opposed to the standard form

16 14:56:34 arbitration agreement?

17 14:56:35 a.sir, i don't give instructions. this was

18 14:56:38 a recommendation, this was our change request to

19 14:56:43 negotiate with the contractor for dubai international

20 14:56:50 arbitration court. i am not fully aware of the

21 14:56:53 original, what we have received, the exact clause what

22 14:56:57 we have received from our consultant. i have to refer

23 14:57:00 to the original proposed contract document and then what

24 14:57:04 i'm trying to explain is, after discussion with our

25 14:57:07 legal team, from the client's side, we propose to

1 14:57:11 install dubai arbitration clause into the contract.

2 14:57:17 this was negotiated accordingly and, to my

3 14:57:20 understanding, signed and agreed by the contractor.

4 14:57:28 mr smith: sorry, everyone. just one question. this was

5 14:57:31 a competitive tendered project, wasn't it?

6 14:57:34 a.correct.

7 14:57:37 mr smith: the form of contract that was anticipated, was

8 14:57:40 that provided to the tenderers from the outset, or was

9 14:57:44 that later negotiated?

10 14:57:49 a.part of contract, yes, it was part of the contract, of

11 14:57:52 the tender package, yes.

12 14:57:55 mr smith: i have nothing further.

13 14:57:59 chairperson: mr mcdougall, do you have any further

14 14:58:02 questions?

15 14:58:03 mr mcdougall: no, i don't. thank you. i'm content.

16 14:58:07 chairperson: okay.

17 14:58:09 i don't have any questions, but, ms habib, coming

18 14:58:12 back to you, in light of the discussion that the

19 14:58:15 tribunal has had with the witness, is there anything

20 14:58:19 further you would like to ask by way of

21 14:58:22 cross-examination?

22 14:58:26 ms habib: i have no further questions related to what the

23 14:58:29 witness has said, but i just realise i have one more

24 14:58:33 question to ask, but if the tribunal allows me, then

25 14:58:38 only i will ask the question.

- 1 14:58:40 chairperson: well, if it's unrelated to what the tribunal
2 14:58:43 has been asking, then i think we should not revert to
3 14:58:46 it, because that would have been part of your original
4 14:58:50 time.
- 5 14:58:51 ms habib: yes. just it's a small question, if the
6 14:58:55 tribunal agrees, then only the witness can reply, if you
7 14:59:02 allow me. i just want to know who has prepared the
8 14:59:05 termination notice. that's it.
- 9 14:59:09 chairperson: well, i don't ...
- 10 14:59:15 ms habib: it's a very important question.
- 11 14:59:17 chairperson: let me ask my co-arbitrators what they
12 14:59:20 think. mr smith, should we allow this question?
- 13 14:59:26 mr smith: i have no objection to it. i don't see the
14 14:59:27 relevance, but i have no objection.
- 15 14:59:29 chairperson: okay. mr mcdougall?
- 16 14:59:33 mr mcdougall: i have exactly the same comment as
17 14:59:34 mr smith.
- 18 14:59:35 chairperson: okay. i will also say it's not clear to me
19 14:59:39 what the relevance of this question is in light of the
20 14:59:41 scope of the issues that we're dealing with, but
- 21 14:59:45 ms habib, why don't you go ahead and ask the question
22 14:59:49 and hopefully mr erdogdu can answer it very succinctly.
- 23 14:59:57 further cross-examination by ms habib
- 24 15:00:00 ms habib: mr ali, as we were discussing also you said the
25 15:00:07 agreement was terminated. so are you aware about this

1 15:00:10 termination letter that was served to us, to the
2 15:00:15 respondent? are you aware about that letter?
3 15:00:17 a.yes, yes.
4 15:00:18 q.are you aware that the letter was issued on 1 october?
5 15:00:23 a.yes.
6 15:00:25 q.and the letter says that you are terminating as per
7 15:00:29 65.9?
8 15:00:33 a.i don't have 65.9. i can't see it.
9 15:00:37 q.yes, but it was mentioned about --
10 15:00:39 mr mcdougall: i'm sorry, madam president, this is one
11 15:00:42 question, it's now three.
12 15:00:44 mr bin touq: yes, we are going again and again.
13 15:00:44 mr mcdougall: i'm sure i'm speaking for all of us in
14 15:00:47 saying that counsel is abusing what was a very clear
15 15:00:51 instruction from the tribunal.
16 15:00:54 chairperson: ms habib, if you want to just ask the one
17 15:00:58 question that you --
18 15:01:01 ms habib: okay.
19 15:01:01 chairperson: but none of these background questions; just
20 15:01:04 your one question.
21 15:01:07 mr bin touq: it's already been asked now.
22 15:01:09 ms habib: the question is whether this letter was
23 15:01:14 prepared by you, mr ali, or not. because it doesn't
24 15:01:18 have the time period which is allowed by the agreement
25 15:01:21 for termination.

- 1 15:01:26 a.the letter is prepared as per the contract terms and
2 15:01:31 conditions and served accordingly.
3 15:01:37 chairperson: okay, ms habib. i think we're done with
4 15:01:39 that.
5 15:01:40 ms habib: okay.
6 15:01:41 chairperson: mr bin touq, in light of the discussion that
7 15:01:45 the tribunal had with the witness and this most recent
8 15:01:49 piece of cross-examination, is there anything that you
9 15:01:52 would like to ask the witness by way of re-direct?
10 15:01:57 mr bin touq: there is no further question. it's clear.
11 15:02:00 chairperson: okay. with that, i think mr erdogdu, we can
12 15:02:06 release you from testifying now so your examination is
13 15:02:11 now complete.
14 15:02:13 if you would like to remain with us to observe the
15 15:02:17 proceedings, you're welcome to do so, but you are also
16 15:02:20 free to go if you do not wish to stay with us.
17 15:02:27 witness: i will stay. thank you.
18 15:02:29 chairperson: okay. in that case, if you would just be so
19 15:02:31 kind as to mute your microphone -- yes, please feel free
20 15:02:37 to remain with us.
21 15:02:38 (witness withdrew)
22 15:02:39 chairperson: now we have foreseen a break here, because
23 15:02:44 we're going to be moving to closing statements. each
24 15:02:48 side has reserved 15 minutes for closing statements.
25 15:02:53 how much of a break would the parties like? i'm

- 1 15:02:57 thinking somewhere maybe 15 minutes? certainly no more
2 15:03:02 than 30 minutes.
3 15:03:04 but perhaps mr bin touq, could you give us your
4 15:03:07 opinion as to how long a break you would like to have
5 15:03:10 before closing?
6 15:03:12 mr bin touq: 15 minutes will be fine.
7 15:03:14 chairperson: okay.
8 15:03:15 ms habib, would 15 minutes also be okay for
9 15:03:18 respondent?
10 15:03:19 ms habib: please, agreed.
11 15:03:21 chairperson: okay. then we will now take a 15-minute
12 15:03:23 break and so we'll reconvene at 18 after the hour.
13 15:03:31 (3.03 pm)
14 15:03:37 (a short break)
15 15:03:39 (3.18 pm)
16 15:18:57 chairperson: we now have closing statements from the
17 15:18:59 parties.
18 15:19:00 we anticipate hearing from respondent first and then
19 15:19:05 followed by claimant.
20 15:19:08 ms habib, are you there? now i see you.
21 15:19:15 if you would like to begin, please feel free to
22 15:19:18 proceed.
23 15:19:26 actually, i'm sorry, ms habib, if you could maybe
24 15:19:29 adjust your camera a bit, because we can -- that's much
25 15:19:33 better. we can see you much better now.

- 1 15:19:39 ms habib: so can i start?
- 2 15:19:42 chairperson: yes, please feel free to start when you're ready.
- 3 15:19:44
- 4 15:19:45 closing submissions by ms habib
- 5 15:19:47 ms habib: good afternoon, the members and the chairperson
- 6 15:19:49 of the tribunal and good afternoon everyone who are
- 7 15:19:54 attending this hearing here with us.
- 8 15:19:58 i would like to make the closing remarks regarding
- 9 15:20:01 the hearing and the testimony of mr ali.
- 10 15:20:12 as everybody has heard what mr ali has said, it
- 11 15:20:16 means it is very clear now that mr ali was directly or
- 12 15:20:21 indirectly involved and participated in answering the
- 13 15:20:25 questions raised by the expert --
- 14 15:20:34 mr al sharhan: i'm sorry to interrupt, i think our lawyer
- 15 15:20:35 is trying to join, he's waiting to be let in, please.
- 16 15:20:38 mr obaid and hatem.
- 17 15:20:40 chairperson: is mr bin touq not with us?
- 18 15:20:44 mr al sharhan: he's waiting to be let in, please. sorry
- 19 15:20:47 for the interruption, gentlemen and ladies.
- 20 15:20:52 chairperson: no, i thank you for the interruption. this
- 21 15:20:56 is very strange.
- 22 15:21:00 okay, i see now, all right. it wasn't popping up on
- 23 15:21:03 my screen.
- 24 15:21:11 mr al sharhan: thank you very much.
- 25 15:21:12 chairperson: no, that's very good. thank you.

- 1 15:21:23 mr bin touq, are you with us now?
- 2 15:21:27 mr bin touq: yes.
- 3 15:21:28 chairperson: very good. i couldn't tell that you were
- 4 15:21:30 not with us before.
- 5 15:21:31 ms habib, will you please start over from the
- 6 15:21:34 beginning of your remarks.
- 7 15:21:38 ms habib: yes, sure. thank you, tribunal.
- 8 15:21:40 so good afternoon, everyone. as we have already
- 9 15:21:45 seen and heard the testimony of mr ali, during the
- 10 15:21:50 cross-examination he has confirmed that he was directly
- 11 15:21:53 or indirectly involved and participated in the questions
- 12 15:21:57 raised by the experts and have answered the queries of
- 13 15:22:02 the court's appointed experts. in a way, he has
- 14 15:22:08 produced some kind of deductions to the experts and
- 15 15:22:13 i can confirm that part of those deductions have been
- 16 15:22:17 accepted by the experts, court experts, court-appointed
- 17 15:22:21 experts.
- 18 15:22:22 so in this matter, i can say that the experts were
- 19 15:22:30 quite fair when they were taking the claims and
- 20 15:22:33 counterclaims and the deductions raised by both parties.
- 21 15:22:37 so i would like to draw the attention of the
- 22 15:22:43 tribunal that i have already included all, a summary of
- 23 15:22:48 the experts' findings in my respondent's objection dated
- 24 15:22:54 18 march, whereby i have already explained that some of
- 25 15:22:59 the deductions which were requested by the claimants

1 15:23:03 have been accepted by the court-appointed expert.

2 15:23:06 so it means that not all the points raised by the

3 15:23:11 claimants were rejected and it means that the claimants

4 15:23:15 were actually participating in the proceedings by

5 15:23:20 quantifying their deductions, by quantifying their

6 15:23:22 claims, before the expert.

7 15:23:23 so if the claimants today are claiming that they

8 15:23:25 have never participated by any means during this

9 15:23:30 six years, is a misleading statement, which i believe

10 15:23:34 the tribunal should address this matter, because it

11 15:23:38 cannot be possible for two parties to be involved in

12 15:23:43 a big and long and very, you know, time-consuming and

13 15:23:49 expensive litigation for six years, involving such a big

14 15:23:54 amount, while one party is not participating.

15 15:23:57 this is not at all a correct or true statement which

16 15:24:02 the claimants are making throughout these proceedings.

17 15:24:06 second point is that i would like to draw the

18 15:24:11 attention of the tribunal to the court of cassation

19 15:24:16 judgment and its finding of 631/2020, whereby the court

20 15:24:20 clearly mentioned that the clause, the arbitration

21 15:24:24 clause has been invalid and court has decided that --

22 15:24:29 court has actually separated the arbitration clause with

23 15:24:33 arbitration agreement.

24 15:24:35 court has said that the contract is valid and the

25 15:24:41 stamp over the arbitration clause page confirms that the

1 15:24:44 agreement is valid, the contract is valid, while the
2 15:24:47 arbitration clause in particular is invalid.
3 15:24:51 there are many reasons that the courts have to find
4 15:24:55 out; even the court of cassation twice have decided that
5 15:25:00 the arbitration agreement or the arbitration clause is
6 15:25:04 invalid because it doesn't specify or it doesn't mention
7 15:25:08 the signature of the parties, which is mandatory as per
8 15:25:12 the law of arbitration of uae 2018.
9 15:25:19 this is the one point.
10 15:25:21 the third point is regarding the res judicata
11 15:25:27 matter. i would like to draw the attention of the
12 15:25:29 tribunal on the judgment, recently judgment, recent
13 15:25:35 judgment issued on 8 january. it's court of cassation
14 15:25:39 appeal number 1121/2023 and 1099/2023, whereby the court
15 15:25:46 of cassation has clearly mentioned that it is not
16 15:25:51 permissible for any party to raise the issue of
17 15:25:56 jurisdiction again before the court because, as
18 15:25:59 mentioned earlier, as the tribunal is aware, that this
19 15:26:03 is not one-stage litigation.
20 15:26:07 this litigation has been through many, many stages.
21 15:26:10 even this litigation case was twice referred to the
22 15:26:15 court of cassation and both court of cassation have
23 15:26:17 accepted that the arbitration clause is invalid.
24 15:26:22 therefore, they accepted the jurisdiction of dubai
25 15:26:25 courts and they allowed the parties to participate and

1 15:26:30 provide their merits.

2 15:26:33 court of appeal case number -- second court of

3 15:26:38 appeal before which the claimant itself has made

4 15:26:43 a special request to the court to appoint tri-party

5 15:26:49 committee of experts who can evaluate and estimate the

6 15:26:54 amount of damages or the amount of claim made by the

7 15:27:00 claimant -- claimant and the respondent at the same

8 15:27:04 time.

9 15:27:05 so now they cannot come back and they cannot say:

10 15:27:07 oh, we never participated. because this should not be

11 15:27:10 accepted. we have been through six years, six long

12 15:27:13 years of litigation before dubai courts again and again.

13 15:27:19 for example, when 631 court decided that the matter --

14 15:27:23 that the cassation court has the jurisdiction over the

15 15:27:26 matter, the court referred back the case to court of

16 15:27:29 appeal to decide on the merits.

17 15:27:31 therefore, during that period, the claimant has

18 15:27:35 requested -- which i have also attached in my response,

19 15:27:38 the claimant has specifically sought the permission of

20 15:27:45 the appeal court to appoint a committee of experts, not

21 15:27:50 the experts which was appointed by the court before in

22 15:27:53 the court of first instance. they rejected and they

23 15:27:57 said: please appoint three tri-party experts so they can

24 15:28:01 look into this matter.

25 15:28:02 can we say now that after all these six years,

1 15:28:06 claimant is right, claiming that loa is the final and
2 15:28:09 binding document, loa should be accepted because it was
3 15:28:13 our client has signed and they have witnesses? no, it
4 15:28:16 cannot be done, that, because it's against the
5 15:28:20 res judicata principle of uae and around the world.
6 15:28:25 i don't know, and i have never, ever seen any case
7 15:28:30 where the court has rejected, the highest supreme court
8 15:28:33 has rejected the arbitration clause. still, the
9 15:28:38 claimant is saying that the arbitration clause is valid
10 15:28:45 and only the arbitrator has the right to decide on
11 15:28:49 competence-competence. its sole jurisdiction. but that
12 15:28:54 competence-competence is valid when the court has not
13 15:28:57 annulled the clause of arbitration. but in this case,
14 15:29:01 court has clearly declared that the arbitration clause
15 15:29:04 is invalid and annulled.
16 15:29:13 my request to the arbitration tribunal is to look
17 15:29:17 into this matter, because i have never come across any
18 15:29:21 arbitration tribunal which can or which has the right or
19 15:29:25 powers to set aside a final and binding judgment issued
20 15:29:29 by the highest court of a country and say that they have
21 15:29:34 the right or they have the powers to arbitrate, or they
22 15:29:38 have the powers to let the parties again retry this
23 15:29:46 matter.
24 15:29:49 there is a path drawn by the uae law which allows
25 15:29:53 that even the supreme court judgment can be set aside

1 15:29:57 and claimant has already using that particular power and
2 15:30:01 has already made the application before the committee in
3 15:30:05 dubai courts.
4 15:30:05 closing submissions by mr el haddad
5 15:30:10 mr el haddad: actually, just if you allow me, because,
6 15:30:12 you know, we've been practising for the last 20 years in
7 15:30:15 the uae and we know the uae very well. we are like --
8 15:30:20 we are litigators.
9 15:30:25 actually, the law has drawn a legal path. the law,
10 15:30:28 the uae procedural law or the new amendments has drawn
11 15:30:32 a legal path, which enables any claimant to retract
12 15:30:38 a supreme court decision. that, definitely, that legal
13 15:30:43 path is not through any arbitration panel. it's not in
14 15:30:47 the uae, it's not anywhere else all over the world.
15 15:30:52 so basically, filing this arbitration case and
16 15:30:56 insisting on involving an arbitration panel, with due
17 15:31:02 respect, of course, and with appreciation to the efforts
18 15:31:06 that the tribunal is obviously doing in this case, but
19 15:31:14 it is a very weird case. you can say it's a very weird
20 15:31:18 case. because it is against the mandatory provisions of
21 15:31:23 the uae law.
22 15:31:26 i can understand, ms kirby, because you're not
23 15:31:30 a lawyer practising probably in the uae, but we have
24 15:31:34 pointed out in our previous submissions the articles of
25 15:31:39 law which are applicable, and obviously which enables

1 15:31:45 any litigant to retract a supreme court decision.

2 15:31:49 definitely this path, the claimant knows it, the

3 15:31:54 claimant knows it very well. so he should have followed

4 15:31:57 this path and obviously he should have, you know,

5 15:32:02 complied with the provisions of the uae.

6 15:32:06 that's it. i believe we said everything we want to

7 15:32:08 say.

8 15:32:10 ms habib: thank you.

9 15:32:12 mr el haddad: thank you.

10 15:32:12 chairperson: okay, thank you very much.

11 15:32:15 we can now move to the claimant's closing.

12 15:32:19 mr bin touq, whenever you would like to begin,

13 15:32:22 please go ahead.

14 15:32:24 closing submissions by mr bin touq

15 15:32:28 mr bin touq: thank you, again. we heard the argument, we

16 15:32:30 heard the witness and we have, since the beginning of

17 15:32:33 this process, since they have participated in the

18 15:32:37 tender, we have an arbitration clause, we have

19 15:32:43 a discussion and we have signed, as per the uae law of

20 15:32:48 arbitration, should be in writing and should be accepted

21 15:32:53 by both parties.

22 15:32:55 now, al mutatawera and crc are based in dubai and

23 15:33:01 they decided together to have the arbitration clause as

24 15:33:06 diac.

25 15:33:07 it's been confirmed, it's never been denied by them

1 15:33:11 that they did not sign. they never deny they did not
2 15:33:15 stamp. they never deny they are not aware of that
3 15:33:20 clause in the contract.
4 15:33:22 now, they started the proceeding in dubai court,
5 15:33:25 which has no relevance in this hearing today. we have
6 15:33:29 the tribunal to examine that they have jurisdiction as
7 15:33:34 per the documents provided on the submission and been
8 15:33:39 signed by both parties.
9 15:33:40 now, is the arbitration clause been done in writing
10 15:33:44 as per the law? yes. it's been signed? yes. it's
11 15:33:48 been stamped? yes. and they did not have any argument
12 15:33:54 denying signing the loa, signing the contract.
13 15:34:02 you have the jurisdiction over this matter,
14 15:34:04 regardless whatever proceeding been done, carry on by
15 15:34:09 them in dubai court. we did not went to dubai court.
16 15:34:12 we know there is arbitration clause and this was an
17 15:34:13 argument as well in dubai courts.
18 15:34:17 now, we would like the tribunal to examine, based on
19 15:34:22 the witness, based on the submission, based on the
20 15:34:25 signed loa, based on the contract, that you have
21 15:34:29 jurisdiction. and they said it's been carried on for
22 15:34:34 a time. now we enter, we submit the application. they
23 15:34:39 accept, they contribute, they pay the fee for diac for
24 15:34:44 50,000. they deny to pay the other share of that cost.
25 15:34:49 now we are here in the process to examine the

1 15:34:52 jurisdiction and we see the tribunal have jurisdiction,
2 15:34:55 and diac is only jurisdiction been signed, accepted by
3 15:35:00 both parties.
4 15:35:01 it's never been denied, it's not been argued that
5 15:35:07 the authorised person from crc, they do not sign and
6 15:35:11 stamp, knowing that the jurisdiction of arbitration of
7 15:35:16 diac is only jurisdiction and you have the jurisdiction
8 15:35:21 over this matter.
9 15:35:22 ali confirmed that in his statements. he's from the
10 15:35:25 beginning in the project till the end of the project and
11 15:35:28 there was no objection from them, since the starting
12 15:35:33 process till the end, about having diac as only
13 15:35:38 jurisdiction on this matter.
14 15:35:42 we had very clearly referring to different law
15 15:35:48 stating that, and we would request the tribunal to
16 15:35:52 examine the jurisdiction over the document been provided
17 15:35:56 and to rule in our favour on this.
18 15:36:07 chairperson: is there anything further you would like to
19 15:36:09 say, mr bin touq?
20 15:36:12 mr bin touq: the final point. also different question
21 15:36:15 been raised about the proceeding in dubai court, asking
22 15:36:18 the witness about it. it's not relevant because we are
23 15:36:22 here, examine the jurisdiction as per the contract, as
24 15:36:27 per the loa, as per the acceptance from them.
25 15:36:31 now, they start the proceeding in dubai court and

1 15:36:34 al mutatawera did not start any proceeding in dubai
2 15:36:36 court. once they have the notification, they reply to
3 15:36:40 that. the argument was been raised on all level that
4 15:36:44 jurisdiction is only diac and there is no power to
5 15:36:50 examine the assessment of tribunal over their
6 15:36:55 jurisdiction based on that.
7 15:36:57 questions by tribunal
8 15:37:01 chairperson: thank you, mr bin touq.
9 15:37:06 i know that the tribunal has questions for counsel.
10 15:37:10 as we've foreseen, now that we've had the closing
11 15:37:13 statements, there are certain issues that the tribunal
12 15:37:16 would like to just ask -- get counsel's input on. there
13 15:37:20 are things that we would like to know as we go into our
14 15:37:25 discussions about these issues.
15 15:37:28 maybe i can kick off the discussion by asking just,
16 15:37:33 you know, during the course of these proceedings, both
17 15:37:35 of you have provided us various updates with respect to
18 15:37:40 the status of the proceedings in the dubai courts and in
19 15:37:45 particular, of course, we have this revocation
20 15:37:48 application that's been put in by claimant.
21 15:37:51 can we please have an update as to the status of
22 15:37:55 that application in particular and anything else going
23 15:37:58 on in the dubai courts potentially related to this
24 15:38:02 matter that you would like to tell us?
25 15:38:04 mr bin touq, could you please begin.

- 1 15:38:07 mr bin touq: yes, the case is still under review and has
2 15:38:10 been postponed four times now. we have the date on
3 15:38:16 30 april, it's been postponed to 7 may and 21 may and
4 15:38:21 25 june. as of today, there is no ruling been issued
5 15:38:26 toward that case.
- 6 15:38:28 chairperson: so are you anticipating, then -- when you
7 15:38:31 say it's postponed, we're now on 27 june, so 25 june has
8 15:38:37 gone by. what is the current date?
- 9 15:38:41 mr bin touq: they did not make any update yet. we follow
10 15:38:43 up with them and usually they take two weeks to post the
11 15:38:49 decision, but it's been postponed for fourth time now.
- 12 15:38:55 chairperson: but --
- 13 15:38:56 mr bin touq: there's no ruling been issued yet and no
14 15:38:59 formal date been given.
- 15 15:39:01 chairperson: i understand then that you're just awaiting
16 15:39:03 a decision; there's no hearing coming up.
- 17 15:39:05 mr bin touq: yes, yes.
- 18 15:39:08 chairperson: ms habib, can i hear from the respondent
19 15:39:11 with respect to this same issue?
- 20 15:39:15 mr el haddad: actually, that retraction application that
21 15:39:22 our colleague is referring to, it's correct, it has been
22 15:39:26 pending and been adjourned for the fourth consecutive
23 15:39:30 time, and a decision was not to be issued on 25 june,
24 15:39:36 but so far there is no decision posted yet on dubai
25 15:39:42 courts website.

1 15:39:45 but i will add, if you don't mind, ms jennifer,
2 15:39:51 because it's very important to note down that this
3 15:39:53 application, the retraction conditions specified in the
4 15:40:00 applicable law has clearly pointed out that this
5 15:40:05 application should be submitted within one-year
6 15:40:09 timeframe from the date on which the supreme court
7 15:40:14 decision or the supreme court judgment was issued.
8 15:40:17 so obviously, if you look into our case, the first
9 15:40:20 cassation case which has nullified the arbitration
10 15:40:25 clause, case 631, december 2020, this judgment was
11 15:40:32 issued in 2020, december 2020, and it had nullified the
12 15:40:37 arbitration clause, consider it as invalid and null and
13 15:40:41 void.
14 15:40:41 so the retraction application should have been
15 15:40:44 placed, should have been submitted within one year from
16 15:40:48 that date. so the last delay was meant to
17 15:40:51 be december 2021.
18 15:40:55 so even this we are not expecting ourselves -- of
19 15:40:59 course, the matter is dependent or is basically left to
20 15:41:03 the court.
21 15:41:04 chairperson: mr el haddad, if i may, i just, you know,
22 15:41:08 i just want to confirm that we're very familiar with
23 15:41:12 your submissions in this case and when these decisions
24 15:41:17 were handed down, and we're also familiar with the
25 15:41:21 points in the code that you have directed us to. we

1 15:41:24 have looked at them. so we are aware of that.

2 15:41:28 i just want one point of clarification, though.

3 15:41:32 with respect to -- you know, we have these two decisions

4 15:41:36 from the court of cassation. but i understand that the

5 15:41:39 first decision of the court of cassation was handed down

6 15:41:42 on 14 march 2021. the case was filed with the court of

7 15:41:47 cassation in 2020, but i think the decision came

8 15:41:51 down march 14, 2021.

9 15:41:54 mr el haddad: correct, march 2021, correct.

10 15:41:56 chairperson: so you see, we're very familiar with what is

11 15:42:00 going on and i just -- of course i'm going to allow

12 15:42:03 mr bin touq to respond to what you just said, but really

13 15:42:06 at this point, what i was seeking really was just an

14 15:42:10 update on anything that has occurred.

15 15:42:15 before i come back to you, mr bin touq,

16 15:42:18 mr el haddad, is there anything else with respect to

17 15:42:22 proceedings in the dubai courts in general that relate

18 15:42:26 to this proceeding that we should know about? anything

19 15:42:29 other than the revocation or retraction?

20 15:42:35 mr el haddad: yes, of course. basically, i'll just let

21 15:42:39 you know about the enforcement proceedings that we've

22 15:42:42 taken or that we filed before dubai courts.

23 15:42:46 al mutatawera had already paid so far in the

24 15:42:51 execution case, the amount of 14 million dirhams has

25 15:42:57 been already paid and has been already deposited before

1 15:43:02 the court.

2 15:43:04 so this amount is of course a partial settlement or

3 15:43:08 was a partial settlement of the total -- out of the

4 15:43:13 total judgment amounts. al mutatawera basically

5 15:43:16 requested the court to suspend the execution proceedings

6 15:43:21 and -- before that, has sought the court authorisation

7 15:43:26 to allow a payment plan for the remaining amount.

8 15:43:31 so that application is on the system with dubai

9 15:43:34 courts and the court has accepted their suggested

10 15:43:39 payment plan. they were supposed now to pay the

11 15:43:42 remaining amount on monthly instalments as of -- the

12 15:43:47 first instalment will be due on 25 july.

13 15:43:51 so this is exactly what is going on right now in the

14 15:43:55 enforcement proceedings.

15 15:43:57 chairperson: okay. mr bin touq, in light of respondent's

16 15:44:01 comments, would you like to add anything with respect to

17 15:44:04 this issue of the status of everything going on in the

18 15:44:08 dubai courts?

19 15:44:10 mr bin touq: we explain that the case still not been

20 15:44:13 having any ruling yet and we see the proceeding in dubai

21 15:44:16 courts still going on, and it have no relevance to

22 15:44:22 examine the jurisdiction over the contract, which has

23 15:44:25 been signed and accepted by crc.

24 15:44:32 in dubai court, we got a stay and suspension waiting

25 15:44:36 for the ruling and this is the current status.

- 1 15:44:43 chairperson: i have another question related to
2 15:44:46 claimant's application in front of the judicial
3 15:44:51 authority. this has come in as exhibit c8. i'm
4 15:44:56 wondering what the status of that application is, mr bin
5 15:45:00 touq, if you wouldn't mind letting us know.
6 15:45:04 mr bin touq: we file the application and still they did
7 15:45:07 not finalise the quorum and who will review the case.
8 15:45:12 chairperson: on what day was that application filed?
9 15:45:14 i couldn't tell from the application itself.
10 15:45:18 mr bin touq: one minute. let me check, if you allow me.
11 15:45:34 (pause).
12 15:45:36 i don't have it in front of me. if i you allow me
13 15:45:39 some time.
14 15:45:41 chairperson: it's not imperative that i know. i just was
15 15:45:44 wondering for the --
16 15:45:46 mr bin touq: it was filed in march and still there is no
17 15:45:49 decision on that.
18 15:45:50 chairperson: it was filed at some point in march of this
19 15:45:52 year?
20 15:45:53 mr bin touq: yes.
21 15:46:03 chairperson: mr bin touq, in that application before the
22 15:46:09 judicial authority, is claimant asking the judicial
23 15:46:12 authority to stay this arbitration?
24 15:46:20 mr bin touq: again?
25 15:46:22 chairperson: in that application before the judicial

- 1 15:46:25 authority, has claimant asked the judicial authority to
2 15:46:32 stay this arbitration?
- 3 15:46:34 mr bin touq: no, to give a stay under proceeding in dubai
4 15:46:38 courts.
- 5 15:46:39 chairperson: can we just look at page 8 of exhibit c8.
- 6 15:46:43 i just want to understand. it may be a translation
7 15:46:48 issue. but i want to look at this.
- 8 15:47:03 do you have it in front of you?
- 9 15:47:05 mr bin touq: i'm opening. one minute.
- 10 15:47:13 it's been filed on 5 february, ma'am.
- 11 15:47:17 chairperson: 5 february it was filed?
- 12 15:47:18 mr bin touq: yes.
- 13 15:47:25 chairperson: do you have exhibit c8, page 8?
- 14 15:47:27 mr bin touq: yes, i think it's translation error.
- 15 15:47:29 chairperson: you see the english there.
- 16 15:47:32 mr bin touq: yes.
- 17 15:47:32 chairperson: so you see what's causing me to ask the
18 15:47:34 question.
- 19 15:47:35 mr bin touq: yes.
- 20 15:47:35 chairperson: so what is the accurate translation of this
21 15:47:39 section?
- 22 15:47:40 mr bin touq: it's to give a stay on the proceeding in
23 15:47:43 dubai courts.
- 24 15:47:44 chairperson: so no stay of this arbitration?
- 25 15:47:46 mr bin touq: no, no.

- 1 15:47:50 chairperson: could i please hear from respondent in terms
2 15:47:52 of this application before the judicial authority?
- 3 15:48:01 mr el haddad: yes, it's still pending.
- 4 15:48:05 chairperson: nothing further to add on that, though?
- 5 15:48:09 mr el haddad: no.
- 6 15:48:11 chairperson: i also had a question related to the issue
7 15:48:15 of costs. i saw that in both parties' submissions, both
8 15:48:20 parties have asked us to award them costs, if they
9 15:48:25 prevail.
- 10 15:48:27 so i just want to ask, mr bin touq, does claimant
11 15:48:30 agree that we have the power to make an award of costs
12 15:48:34 in this case?
- 13 15:48:36 mr bin touq: yes.
- 14 15:48:37 chairperson: i would like to ask the same of respondent.
15 15:48:39 does respondent agree that we have the power to make an
16 15:48:42 award of costs in this case?
- 17 15:48:48 mr el haddad: yes, of course.
- 18 15:48:51 chairperson: i also wanted to flag for the parties that
19 15:48:58 the tribunal is not inclined to get cost submissions
20 15:49:02 from the parties at this stage. no matter what we
21 15:49:06 decide with respect to jurisdiction, we'll come back to
22 15:49:09 the parties on costs. we aren't going to deal with this
23 15:49:12 right now.
- 24 15:49:14 so obviously, if we decide we have jurisdiction, the
25 15:49:17 issue of costs can be put off until some time long into

1 15:49:21 the future. even if we decide we don't have
2 15:49:24 jurisdiction, we'll come back to the parties with a view
3 15:49:28 to getting submissions on costs and making a cost
4 15:49:31 determination soon after that.
5 15:49:35 whatever we do now will necessarily be a partial
6 15:49:38 award, not a final award in this case, no matter what we
7 15:49:44 decide.
8 15:49:46 maybe with that, if i can turn to my co-arbitrators,
9 15:49:52 mr smith, is there anything that you would like to raise
10 15:49:56 at this stage, any questions you may have for counsel?
11 15:50:00 mr smith: i did have a couple.
12 15:50:03 just following on from your questioning in relation
13 15:50:06 to the two pending cases or two pending reviews locally.
14 15:50:16 i just wanted to ask -- and i'll ask in the same way you
15 15:50:20 did, first to mr bin touq and then ask for a response
16 15:50:23 from al jazeera.
17 15:50:25 first question, or possibly the only question is:
18 15:50:32 did the respondent participate in either of those
19 15:50:38 processes, or is it simply an application that is
20 15:50:42 decided based on the claimant's application?
21 15:50:48 mr el haddad: yeah, thank you for the question. no, as
22 15:50:51 per the law, it's a one-sided application, where the
23 15:50:58 opponent does not have the right obviously to
24 15:51:01 participate or to reply or to make a submission, to make
25 15:51:08 a submission to address the claimant's application.

- 1 15:51:14 so obviously i can say it's one, it's an
2 15:51:18 application, it's a one-sided application done by or
3 15:51:23 filed by al mutatawera. we haven't participated.
4 15:51:29 mr smith: thank you for clarification.
5 15:51:30 just asking mr bin touq if that's correct.
6 15:51:33 mr bin touq: there is two cases. one case, he's right,
7 15:51:36 we file it by al mutatawera. in other case, they file
8 15:51:41 their reply to that case.
9 15:51:43 mr el haddad: yeah, i was talking about the retraction
10 15:51:46 application, not about both applications. just to make
11 15:51:49 it clear.
12 15:51:49 mr smith: similarly, just in terms of the dubai courts
13 15:51:52 proceedings, all of this started as many of these cases
14 15:51:58 do, with a precautionary attachment application. have
15 15:52:00 the bank guarantees been returned?
16 15:52:07 mr el haddad: bank guarantee, i believe so, yes. i have
17 15:52:10 to get back to the client to reconfirm, but obviously we
18 15:52:13 believe so, yes.
19 15:52:15 mr smith: so that's not part of the execution case?
20 15:52:22 mr el haddad: can i just get back to you on this?
21 15:52:24 mr smith: i'll ask mr bin touq as well. he may be able
22 15:52:26 to clarify.
23 15:52:27 mr bin touq: yes, it's already back to them and it stays,
24 15:52:32 remain, and they have the bond back.
25 15:52:36 mr smith: thank you. then while you're there, mr bin

1 15:52:38 touq, i had a more technical question in relation to the
2 15:52:44 letter of acceptance. it features in your submissions
3 15:52:50 to the tribunal, but i just wanted to ask what the
4 15:52:54 claimant says is the effect of the letter of acceptance
5 15:52:59 in this case. what's your reliance on it?
6 15:53:03 mr bin touq: it refer to the clause, it's very clearly
7 15:53:07 stamped and signed by both party, the acceptance of the
8 15:53:09 clause of arbitration of diac, and followed by the
9 15:53:14 contract and it's been already included, and it's never
10 15:53:18 been changed on any subcontract.
11 15:53:22 mr smith: but are you saying to us that we can find
12 15:53:26 jurisdiction from, i think it's clause 4.2 in the letter
13 15:53:32 of acceptance, or are you saying that the letter of
14 15:53:35 acceptance is evidence that there is agreement of the
15 15:53:38 arbitration clause within the contract proper?
16 15:53:43 mr bin touq: yes.
17 15:53:44 mr smith: so you're saying, rather than being
18 15:53:46 a standalone arbitration agreement, it is evidence of
19 15:53:51 the parties' agreement later in the formal contract that
20 15:53:53 was signed?
21 15:53:59 mr bin touq: what's been explained, that because of the
22 15:54:00 process and the project fast-track, they signed the loa
23 15:54:04 and later they signed the contract.
24 15:54:12 mr smith: i might not have been sufficiently clear. so
25 15:54:16 you're saying that it's evidence that they agreed with

1 15:54:22 the arbitration clause in the contract that was signed,
2 15:54:27 rather than the clause in the letter of acceptance being
3 15:54:31 a standalone arbitration agreement.
4 15:54:33 mr bin touq: yes.
5 15:54:40 mr smith: just for the sake of good order, i'm just
6 15:54:43 wondering whether that's something that the respondent
7 15:54:47 would like to respond to or whether that can just be
8 15:54:53 left as it is.
9 15:54:55 mr el haddad: actually, yes. that loa letter was before
10 15:55:00 the contract and obviously, that document, the claimant
11 15:55:07 himself has acknowledged that it was never been
12 15:55:10 submitted to the court.
13 15:55:12 i'm wondering here, if this document was so
14 15:55:15 important, and this document would have obviously
15 15:55:20 supported their allegations in terms of the
16 15:55:24 applicability of the arbitration clause, so why it was
17 15:55:28 not submitted before the court?
18 15:55:31 again here i want to ask another question. our
19 15:55:36 colleague mr obaid was saying that we have never
20 15:55:38 accepted, we have never accepted the jurisdiction of
21 15:55:42 dubai courts, which is not true. they decided to file
22 15:55:47 an arbitration case after six years. they decided to
23 15:55:53 file an arbitration case.
24 15:55:55 getting back to your question, so if this loa was so
25 15:56:01 important, and if that loa would have changed on the

1 15:56:06 supposition that this loa, the submission of this loa to
2 15:56:11 the court would have changed the outcome of the supreme
3 15:56:15 court decision or would have pushed the court to accept
4 15:56:19 the jurisdiction of diac.
5 15:56:22 so let's put this as, like, supposedly. why it has
6 15:56:26 never been submitted? that's a question here. the
7 15:56:30 claimant can't write now, say that it was a mistake. if
8 15:56:35 it was a mistake, as he said earlier, that's his mistake
9 15:56:39 and they should bear the consequences of that mistake.
10 15:56:42 if diac had jurisdiction, why diac case was not
11 15:56:47 filed since 2018. the claimant himself is saying that
12 15:56:52 in the current claim that the tribunal is deciding on,
13 15:56:57 they are claiming, they are making huge claims.
14 15:57:00 all these claims were made before the court.
15 15:57:05 basically, two committees were appointed in compliance
16 15:57:10 with al mutatawera request. the court have given them
17 15:57:15 three experts. so if diac has jurisdiction, why the
18 15:57:19 case has not been filed since 2018? if they are
19 15:57:23 rightful in their claim, why they didn't do this case in
20 15:57:27 2018?
21 15:57:28 actually, we know for a fact that if we consider the
22 15:57:34 unlawful termination of the contract that took place,
23 15:57:37 which was not in compliance with the contractual terms,
24 15:57:41 if we consider this, we would understand that
25 15:57:45 al mutatawera back then had the intention to terminate

1 15:57:48 the contract and not to pay. that's the only reasonable
2 15:57:53 explanation. otherwise, al mutatawera would have filed
3 15:57:58 an arbitration case in 2018 and claimed what they are
4 15:58:03 alleging to be entitled for.
5 15:58:09 mr smith: i think that goes a long way beyond what
6 15:58:11 i initially asked and probably verges on being testimony
7 15:58:14 from the bar table.
8 15:58:18 i don't think it's necessarily anything that we need
9 15:58:20 to speculate on, why they might have taken decisions
10 15:58:26 that they did.
11 15:58:33 i suppose the question that follows up from
12 15:58:35 initially what you said there is just in relation to the
13 15:58:42 loa not having been put before the court of cassation.
14 15:58:46 is it the respondent's position that the res judicata
15 15:58:52 would therefore apply to any argument that could have
16 15:58:54 been made at the time? i note that you put forward
17 15:58:56 a couple of articles in support of your submissions, but
18 15:59:00 is that the gist of what you're saying?
19 15:59:08 mr el haddad: actually, the law has drawn a legal path in
20 15:59:13 the event that any litigant who basically, for a valid
21 15:59:16 reason, couldn't submit a document before the court,
22 15:59:20 there is a legal path drawn by the law, which allows him
23 15:59:24 to refile or to -- to refile the case and get the court
24 15:59:29 look again into his case, which has never been followed
25 15:59:32 by the claimant.

1 15:59:35 so if this document was not submitted for a valid
2 15:59:39 reason, like for being missed or for being, let's say,
3 15:59:44 stolen or kept in a place, locked place or whatever,
4 15:59:49 there is a legal path that the claimant can, you know,
5 15:59:57 follow, which they didn't.
6 16:00:01 mr smith: but let me be devil's advocate on that view,
7 16:00:05 then, and just to tease this out and not to make the
8 16:00:09 claimant's case for it. but the claimant's position
9 16:00:11 here is that all disputes should be taken to
10 16:00:13 arbitration. so it would stand to reason, wouldn't it,
11 16:00:18 that it wouldn't commence its own case in relation to
12 16:00:21 that.
13 16:00:22 but the question i asked you that i don't think
14 16:00:25 i got an answer to was: this failure to submit the loa
15 16:00:31 in the court cases on the part of the claimant, in your
16 16:00:34 submission, is that part of the res judicata submission
17 16:00:38 that you made before us?
18 16:00:45 ms habib: regarding the res judicata, the court of
19 16:00:48 cassation is highlighting the fact that the question
20 16:00:52 that was raised by the claimant, that the jurisdiction
21 16:00:56 is diac arbitration, that's when the dubai courts, court
22 16:01:02 of cassation has said: no, this matter has already been
23 16:01:06 decided by the supreme court or court of cassation
24 16:01:08 already and now they cannot again look into this matter
25 16:01:12 in another appeal.

1 16:01:13 as you're aware, there were two cassation courts
2 16:01:16 matters. one is 631 in which the court of cassation
3 16:01:20 decided no arbitration, invalidity. they returned the
4 16:01:24 matter to court of appeal. but when it went again, they
5 16:01:28 again went for court of cassation, in second court of
6 16:01:31 cassation appeal. court said: this matter has already
7 16:01:34 been decided by us and we cannot again look into this
8 16:01:38 matter. that's what the court said.
9 16:01:41 mr smith: okay.
10 16:01:47 then the next question i've got for you, while
11 16:01:50 you're there, ms raheela, and this is one that again
12 16:01:56 goes to something that's probably the heart of this case
13 16:02:00 for us: on the one hand, you say we've got a court of
14 16:02:04 cassation decision, and i think the words you used are
15 16:02:08 that the court of cassation has annulled the arbitration
16 16:02:12 clause or invalidated it.
17 16:02:16 ms habib: yes.
18 16:02:17 mr smith: yet, we sit here as a tribunal in front of you
19 16:02:21 and we are required to comply with the federal
20 16:02:24 arbitration law. as you know, clause 19 of the federal
21 16:02:28 arbitration law says that it's for the arbitral tribunal
22 16:02:33 to make a decision on its jurisdiction, including any
23 16:02:43 plea based on the absence, invalidity or failure of the
24 16:02:46 arbitration agreement to cover the subject matter of
25 16:02:49 a dispute.

1 16:02:50 now, i don't think you will dispute that the federal
2 16:02:53 arbitration law is a valid piece of federal
3 16:02:57 legislation --
4 16:02:58 mr el haddad: no, no, absolutely.
5 16:02:59 mr smith: -- in the uae, but how do we reconcile those
6 16:03:02 two things? because you're saying to us on the one
7 16:03:06 hand, we can't make a decision because the court of
8 16:03:08 cassation has got in first. but on the other hand, i've
9 16:03:12 got a statute here that is signed by the ruler of dubai
10 16:03:16 that seems to indicate to us that that's a decision that
11 16:03:20 we are supposed to make.
12 16:03:21 so, before you answer, the second bit of the
13 16:03:26 question or the background to the question is: the
14 16:03:29 second part of article 19 says that if we do make an
15 16:03:33 award on jurisdiction, it's then for the court, which in
16 16:03:38 that case would be the court of appeal of dubai, to
17 16:03:41 decide whether or not we got that decision right.
18 16:03:45 how do we reconcile the procedure in the federal
19 16:03:48 arbitration law with what the court of cassation has
20 16:03:51 done in this case?
21 16:03:53 and, mr bin touq, i hope you were listening because
22 16:03:56 i don't think i want to repeat the question again,
23 16:03:58 because the same question is coming to you to explain
24 16:03:59 that as well.
25 16:04:01 mr bin touq: it's very clear. the tribunal have the

1 16:04:03 power to examine the jurisdiction over the case, and
2 16:04:08 this will be subject to being re-examined by dubai
3 16:04:10 courts. it's not the other way around. this is what
4 16:04:14 the law says.

5 16:04:17 mr smith: sorry, ms raheela, what's your answer to that
6 16:04:20 question?

7 16:04:21 mr bin touq: yes, tribunal have the right to examine the
8 16:04:25 jurisdiction over the contract between both parties, and
9 16:04:28 after that, they have the right to appeal it in dubai
10 16:04:32 courts.

11 16:04:35 mr smith: sorry, just to ask the respondent now for their
12 16:04:38 answer to that question.

13 16:04:39 mr el haddad: well, actually, if we read all together
14 16:04:43 article 8, what you said is very clear. i mean, you
15 16:04:46 have your own -- you can decide on the jurisdiction,
16 16:04:53 absolutely. no one is questioning that. but in the
17 16:04:55 same time, you cannot basically revive or make a dead
18 16:05:06 arbitration clause as alive. the arbitration clause has
19 16:05:09 been nullified, has been considered null and void, and
20 16:05:14 obviously, when an arbitration clause is invalidated by
21 16:05:20 the highest court in any jurisdiction in the world, no
22 16:05:24 one can obviously argue that.
23 16:05:29 so yes, correct, what you said is 100 per cent
24 16:05:33 correct, when an arbitration clause is not nullified or
25 16:05:38 is not annulled by the court, by the highest court.

- 1 16:05:49 mr bin touq: the examine of jurisdiction is related to
2 16:05:51 the assessment of tribunal. can be reviewed by the
3 16:05:56 court after that. not the other way around.
4 16:06:00 mr el haddad: when there is no final supreme court
5 16:06:02 decision. this is possible, yes. yes, mr obaid, that's
6 16:06:07 correct. but when there is no cassation decision,
7 16:06:09 you're applying the arbitration clause.
8 16:06:13 mr smith: thank you. i think this gets to the heart of
9 16:06:15 where i was going and thank you both for your oral
10 16:06:17 submissions on that.
11 16:06:19 i suppose my closing point here is that, to me, it
12 16:06:24 seems a little bit like: what came first, the chicken or
13 16:06:27 the egg. you both heard this thing. because i think
14 16:06:32 the respondent's position is that we have no
15 16:06:34 jurisdiction because the court of cassation has already
16 16:06:37 killed the arbitration agreement. whereas i think
17 16:06:39 mr bin touq is saying, well, actually, the only way that
18 16:06:44 the arbitration agreement can be annulled is if we make
19 16:06:49 a decision and then, if that's appealed and then the
20 16:06:54 court of appeal finds --
21 16:06:55 mr el haddad: can i ask a question to --
22 16:06:57 mr smith: ask us a question?
23 16:06:59 mr el haddad: yes.
24 16:07:00 mr smith: i think that's a matter for the chair.
25 16:07:02 mr el haddad: actually, question in the same context.

1 16:07:04 it's not a question.

2 16:07:06 so let's suppose that the tribunal decides on the

3 16:07:10 jurisdiction. what happens? the matter, then, they

4 16:07:16 have to validate the arbitration clause before the court

5 16:07:19 of appeal. can the court of appeal contradict a supreme

6 16:07:24 court decision? can a court of appeal, which is a lower

7 16:07:30 court, then they can nullify a supreme court decision?

8 16:07:38 that's a question.

9 16:07:41 so obviously --

10 16:07:45 mr bin touq: they can --

11 16:07:46 mr el haddad: -- that power to any arbitration panel in

12 16:07:50 any part of the world is given, correct. but only when

13 16:07:56 an arbitration clause is still valid or is still not

14 16:08:01 nullified or has not been nullified.

15 16:08:05 so that is exactly. so we agree, we share the same

16 16:08:13 interpretation. but only there is a small difference,

17 16:08:16 is that you cannot survive death. a death is a death.

18 16:08:21 it's death. you cannot survive it.

19 16:08:26 mr smith: mr bin touq, would you like to respond and then

20 16:08:28 i think that's the end of my question.

21 16:08:30 mr bin touq: the point now, the examination of the

22 16:08:31 arbitration clause is a sole power of tribunal to decide

23 16:08:36 and can be reviewed by the appeal court after that.

24 16:08:39 it's not other way around.

25 16:08:42 now, you have a cassation ruling, it's not about the

1 16:08:44 assumption of assessment of tribunal jurisdiction over
2 16:08:48 a contract signed by loa, signed, stamped by you. you
3 16:08:52 did not deny that. you did not deny signing the
4 16:08:56 contract and we have diac as a jurisdiction.
5 16:09:00 the sole power to tribunal to decide and examine
6 16:09:04 that the contract between both parties have arbitration
7 16:09:08 clause, has been in writing, has been signed, has been
8 16:09:11 stamped and, based on their award, both party can go and
9 16:09:18 assist in the appeal court. this is what the law says.
10 16:09:23 mr smith: thank you both. that was very, very helpful.
11 16:09:28 back to the chair.
12 16:09:33 chairperson: mr mcdougall, do you have questions that you
13 16:09:36 would like to discuss with counsel?
14 16:09:39 mr mcdougall: i do. thank you. can you hear me?
15 16:09:43 mr bin touq: yes.
16 16:09:45 mr mcdougall: i'll try and take this in pieces.
17 16:09:49 i just want to make sure that i've understood the
18 16:09:53 factual background and to confirm whether there's
19 16:09:58 agreement or disagreement on the following factual
20 16:10:01 background.
21 16:10:05 there was a tender. the tender included a diac
22 16:10:14 arbitration clause. there was a letter of agreement
23 16:10:21 entered into after the tender, which contains a diac
24 16:10:27 arbitration clause, and there was a contract agreement
25 16:10:36 entered into after the letter of acceptance agreement

- 1 16:10:44 and it too contained a diac arbitration clause.
- 2 16:10:48 i just want to ask each party if i've stated those
- 3 16:10:52 facts correctly, and i'll start with the claimant.
- 4 16:10:56 mr bin touq, do you have the factual background
- 5 16:10:59 right? i'm not asking for a submission, i just want to
- 6 16:11:02 know, do i have the facts right?
- 7 16:11:05 mr bin touq: yes.
- 8 16:11:06 mr mcdougall: okay. then respondent, have i stated those
- 9 16:11:09 facts correctly or not?
- 10 16:11:14 mr el haddad: that's correct.
- 11 16:11:15 mr mcdougall: okay. my next question, which is also
- 12 16:11:19 a factual one. am i correct -- and if you want to look
- 13 16:11:28 at it, you're welcome to look at it, it's exhibit c1,
- 14 16:11:31 the letter of acceptance. am i correct that the letter
- 15 16:11:34 of acceptance, on the page that has the arbitration
- 16 16:11:39 agreement, has the parties' signatures? is that
- 17 16:11:43 a correct fact?
- 18 16:11:45 i'll start with the claimant, "yes" or "no"?
- 19 16:11:47 mr bin touq: yes.
- 20 16:11:48 mr mcdougall: and respondent, is that a correct fact,
- 21 16:11:50 "yes" or "no"?
- 22 16:11:51 ms habib: yes.
- 23 16:11:52 mr mcdougall: then am i also correct that the letter of
- 24 16:11:56 acceptance provides that the parties will enter into
- 25 16:12:02 a -- quote, unquote -- formal contract?

- 1 16:12:06 is that correct, mr bin touq, for the claimant?
- 2 16:12:08 mr bin touq: yes.
- 3 16:12:09 mr mcdougall: is that correct for the respondent?
- 4 16:12:11 ms habib: yes.
- 5 16:12:13 mr el haddad: that is correct.
- 6 16:12:14 mr mcdougall: then am i also correct, is it also right
- 7 16:12:18 that the contract agreement, and this is exhibit r1,
- 8 16:12:24 provides in recital number 3 -- and this is on page 37
- 9 16:12:30 of my pdf. i don't know if that's the same numbering
- 10 16:12:33 for everybody else, but the contract agreement, just for
- 11 16:12:37 your reference, starts in my document at pdf 36. on pdf
- 12 16:12:44 37, we have the recitals.
- 13 16:12:46 recital 3 says, and i'll just read the beginning
- 14 16:12:50 of it:
- 15 16:12:50 "the following documents shall be deemed to form and
- 16 16:12:52 be read and construed as part of the contract ..."
- 17 16:12:55 and (a) is this contract agreement and (b) is the
- 18 16:13:01 letter of acceptance.
- 19 16:13:02 so am i right in reading that; do the parties agree
- 20 16:13:11 that the letter of acceptance forms and is to be read
- 21 16:13:16 and construed as part of the capital-c contract? is
- 22 16:13:20 that the claimant's position, mr bin touq?
- 23 16:13:24 mr bin touq: yes.
- 24 16:13:25 mr mcdougall: and respondent, do you agree with that
- 25 16:13:27 statement or not?

- 1 16:13:29 mr el haddad: the new arbitration law has clearly --
- 2 16:13:32 mr mcdougall: sorry, that wasn't my question. please
- 3 16:13:32 answer my question first. do you agree with that
- 4 16:13:35 statement or not?
- 5 16:13:36 mr el haddad: what's your question? i couldn't hear
- 6 16:13:38 what's your question.
- 7 16:13:39 mr mcdougall: the question is, do you agree that the
- 8 16:13:42 contract provides, in exhibit r1 in recital number 3,
- 9 16:13:47 that the letter of acceptance is "deemed to form and be
- 10 16:13:53 read and construed as part of the contract", capital c.
- 11 16:13:56 do you agree with that statement?
- 12 16:13:59 mr el haddad: absolutely.
- 13 16:14:01 mr mcdougall: okay.
- 14 16:14:04 mr el haddad: but if you allow me to answer, if you allow
- 15 16:14:05 me to answer.
- 16 16:14:07 mr mcdougall: you'll be allowed to make a submission in
- 17 16:14:09 a moment, i just want to be sure about --
- 18 16:14:10 mr el haddad: because i didn't complete my answer.
- 19 16:14:12 mr mcdougall: excuse me. i'm just asking if you agree
- 20 16:14:14 with these facts.
- 21 16:14:16 mr el haddad: yes, of course.
- 22 16:14:16 mr mcdougall: then i will ask you to make whatever
- 23 16:14:16 submission you want.
- 24 16:14:18 mr el haddad: of course, of course.
- 25 16:14:19 mr mcdougall: am i also right in understanding that in

- 1 16:14:23 the court proceedings, any of the court proceedings,
2 16:14:25 whatever level of the court, that the letter of
3 16:14:28 acceptance was not submitted by either party? is that
4 16:14:32 a correct statement? claimant, is that correct?
5 16:14:35 mr bin touq: no. we submitted it.
6 16:14:38 mr mcdougall: you think it's not correct?
7 16:14:39 mr bin touq: not correct. we submitted in the court.
8 16:14:41 mr mcdougall: why is that not correct? just tell me in
9 16:14:43 what way is it not correct.
10 16:14:44 mr bin touq: it's been submitted in the court.
11 16:14:46 mr mcdougall: okay. well, it's been submitted in the
12 16:14:48 court recently, i understand.
13 16:14:50 mr bin touq: no, it's been previously submitted to the
14 16:14:52 court.
15 16:14:52 mr mcdougall: when you say previously, how far back?
16 16:14:57 mr bin touq: it's in june.
17 16:15:00 mr mcdougall: june of this year or a different year?
18 16:15:03 mr bin touq: last year.
19 16:15:05 mr mcdougall: when the court -- let's use "court" in
20 16:15:09 a broad sense. when the court made its determination
21 16:15:12 that that was not a valid arbitration agreement, had the
22 16:15:15 letter of acceptance been put into the record of
23 16:15:17 materials before the court? "yes" or "no"?
24 16:15:21 mr bin touq: yes.
25 16:15:25 mr mcdougall: i'm puzzled here, because i had understood

- 1 16:15:27 your position to be that it had not been put into the
2 16:15:30 record before.
- 3 16:15:31 mr bin touq: i did not mention that. now, they file for
4 16:15:35 the case. our standing was we have arbitration clause
5 16:15:39 and all the way was we have arbitration clause, dubai --
6 16:15:44 mr mcdougall: let me stop you there.
7 16:15:47 mr bin touq: i will answer the question --
8 16:15:49 mr mcdougall: i'm being very specific. the letter of
9 16:15:50 acceptance --
10 16:15:50 mr bin touq: the letter of acceptance --
11 16:15:50 mr mcdougall: -- have i understood your -- excuse me,
12 16:15:51 please don't interrupt me.
13 16:15:53 mr bin touq: okay.
14 16:15:55 mr mcdougall: i will speak and then you can speak, and we
15 16:15:57 will go like that.
16 16:15:59 mr bin touq: no problem.
17 16:16:00 mr mcdougall: otherwise we are going to be here for far
18 16:16:02 too long and we have a court reporter who will not be
19 16:16:04 able to keep a transcript. understood?
20 16:16:07 mr bin touq: yes, clear.
21 16:16:08 mr mcdougall: that goes for both parties, by the way.
22 16:16:11 the letter of acceptance, i understood your written
23 16:16:14 submissions to us in this arbitration to be that the
24 16:16:17 letter of acceptance had not been provided to the court.
25 16:16:22 was the letter of acceptance provided to the court?

- 1 16:16:26 if so, when?
- 2 16:16:29 mr bin touq: it's provided to the court, it's provided
- 3 16:16:31 in june 2023 and provided in our two cases which is
- 4 16:16:35 pending for ruling.
- 5 16:16:37 mr mcdougall: but you're saying not before june 2023;
- 6 16:16:39 have i understood that properly?
- 7 16:16:41 mr bin touq: yes, yes.
- 8 16:16:43 mr mcdougall: let me just confirm with respondent. do
- 9 16:16:46 you agree with those facts, that that is when the letter
- 10 16:16:48 of acceptance was provided to the courts? only
- 11 16:16:52 in june 2023?
- 12 16:16:54 mr el haddad: i don't know. we don't know honestly when
- 13 16:16:56 exactly.
- 14 16:16:58 mr mcdougall: how is that possible that you don't know?
- 15 16:17:01 mr el haddad: if the claimant is saying he knows, then,
- 16 16:17:03 you know, i don't mind. i mean --
- 17 16:17:06 mr mcdougall: you're not disputing that fact.
- 18 16:17:09 ms habib: sir --
- 19 16:17:10 mr el haddad: at all. actually i have no -- actually,
- 20 16:17:12 for me, our position is very clear. that --
- 21 16:17:15 mr mcdougall: just a moment, please.
- 22 16:17:17 mr el haddad: no, no, you're asking me question.
- 23 16:17:19 mr mcdougall: no, my question was very clear. do you
- 24 16:17:21 dispute or not that the first time the letter of
- 25 16:17:24 acceptance was submitted to the courts was in june 2023;

- 1 16:17:27 "yes" or "no"?
- 2 16:17:29 ms habib: sir, in their own written submissions
- 3 16:17:32 respondent said that they never submitted this document
- 4 16:17:35 before the court. i'm just checking where it is
- 5 16:17:37 written. i will give you the reference.
- 6 16:17:39 mr mcdougall: okay. so your position is the claimant is
- 7 16:17:43 changing its position.
- 8 16:17:45 ms habib: yes.
- 9 16:17:46 mr mcdougall: we'll come back to that in a moment.
- 10 16:17:49 ms habib: yes.
- 11 16:17:49 mr mcdougall: there seems to be disagreement on the
- 12 16:17:51 letter of acceptance.
- 13 16:17:53 ms habib: yes. i'm checking where it is mentioned. i'm
- 14 16:17:56 sorry.
- 15 16:17:56 mr mcdougall: that's fine. no problem. please take your
- 16 16:17:58 time.
- 17 16:17:58 while you're looking. prior to june 2023, let's
- 18 16:18:05 take that so that we don't have an argument, did the
- 19 16:18:10 court -- i mean, the contract agreement refers to the
- 20 16:18:13 letter of acceptance. right there in the recital.
- 21 16:18:15 i just mentioned it. did the court ever ask to be
- 22 16:18:20 provided with a copy of the letter of acceptance; "yes"
- 23 16:18:23 or "no"? claimant?
- 24 16:18:25 mr bin touq: no.
- 25 16:18:27 mr mcdougall: respondent?

- 1 16:18:30 mr el haddad: we have to get back to the file actually.
- 2 16:18:33 we have to get back to the file to answer these details
- 3 16:18:36 because the case, you know, when a case already is
- 4 16:18:41 decided years back, you don't remember the facts.
- 5 16:18:46 mr mcdougall: the facts are very important for us here.
- 6 16:18:49 mr el haddad: absolutely.
- 7 16:18:50 mr mcdougall: you have had opportunities to make
- 8 16:18:52 submissions to us, and i'm asking you what your client's
- 9 16:18:55 position is with respect to the letter of acceptance and
- 10 16:18:59 the contract agreement and what was provided to whom,
- 11 16:19:01 when.
- 12 16:19:03 if you can't help me, you can't help me. but
- 13 16:19:05 i understand, according to the claimant, that prior
- 14 16:19:08 to june 2023, the court did not ask for a copy of the
- 15 16:19:13 letter of acceptance, and i'm just asking whether you
- 16 16:19:15 agree or disagree with that. if you can't say, that's
- 17 16:19:18 fine. i just want to know.
- 18 16:19:22 mr el haddad: yes.
- 19 16:19:23 ms habib: sir, i found out that it's the claimant's
- 20 16:19:26 response dated 1 april, point number 8, in which they
- 21 16:19:31 said that the claimant confirmed that this document was
- 22 16:19:33 never submitted throughout the dubai courts proceedings,
- 23 16:19:37 which was a procedural error regarding this document.
- 24 16:19:42 they have written.
- 25 16:19:46 mr mcdougall: would you like to comment on that,

- 1 16:19:47 claimant?
- 2 16:19:53 mr bin touq: it's been already submitted and now the
- 3 16:19:55 question was, do they know it's been submitted or not.
- 4 16:20:00 we said we have an error on our submission regarding the
- 5 16:20:04 loa, it's been submitted to the court.
- 6 16:20:07 mr mcdougall: i think i've exhausted the questions in
- 7 16:20:11 terms of the facts that i was trying to get at.
- 8 16:20:17 as to the rest, i think it will be for deliberations
- 9 16:20:19 and discussion with my co-arbitrators. i think i'll
- 10 16:20:23 stop there. thank you.
- 11 16:20:27 chairperson: i just want to have a look at my notes to
- 12 16:20:28 see if i have any further questions in light of what has
- 13 16:20:33 been discussed so far.
- 14 16:20:53 i have one question which i would like to ask mr bin
- 15 16:20:56 touq.
- 16 16:20:58 mr bin touq, the parties' dispute arose in
- 17 16:21:05 october 2018 and claimant did not file for arbitration
- 18 16:21:12 until july 2023. i'm just wondering why? why did
- 19 16:21:20 claimant wait so long to file for arbitration when it
- 20 16:21:26 was objecting in the dubai courts that there was, in
- 21 16:21:29 fact, an arbitration agreement?
- 22 16:21:35 mr bin touq: we as a counsel, we came in on june 2023 and
- 23 16:21:39 based on our discussion with them, we proceed on the
- 24 16:21:44 case. previously, there was -- they have no clarity how
- 25 16:21:50 this was going in the court and they was, from the

1 16:21:54 day one on that proceeding, which we was not involved,
2 16:21:58 they stating that they have jurisdiction.
3 16:22:01 now, not filing, this was their decision.
4 16:22:07 chairperson: so you don't know why your client waited so
5 16:22:11 long to come to the diac; is that correct?
6 16:22:16 mr bin touq: yes.
7 16:22:19 chairperson: also, as we flagged, one of the issues -- of
8 16:22:24 course we have been talking a lot about jurisdiction,
9 16:22:27 but there's also an issue of admissibility in this case
10 16:22:30 as it's been characterised, particularly in claimant's
11 16:22:34 submissions.
12 16:22:35 so another question for you, mr bin touq, is
13 16:22:40 i understand that before filing for arbitration,
14 16:22:45 claimant did not comply with any of the pre-arbitration
15 16:22:49 steps that are in sections 67.1 and 67.2 of the dispute
16 16:22:56 settlement provisions.
17 16:22:58 is my understanding correct?
18 16:23:00 mr bin touq: no, they was enter on the discussion and
19 16:23:03 there's been not entertained by them and, based on that,
20 16:23:08 they call for couple of meetings, and they was ready to
21 16:23:11 have the final accounts and settle with them, but they
22 16:23:15 try to proceed to dubai -- first of all, they close the
23 16:23:18 school and they have the labour on the site and they
24 16:23:21 been forced to call police and they call for discussion
25 16:23:25 to have as per the contract, and they do not follow, and

- 1 16:23:28 they proceed to dubai courts.
- 2 16:23:32 chairperson: sorry, sir. i'm talking about with respect
- 3 16:23:34 to the claims that claimant is asserting in this
- 4 16:23:37 arbitration.
- 5 16:23:39 with respect to the claimant's claims, it's my
- 6 16:23:44 understanding that claimant has not taken its own claims
- 7 16:23:50 through the pre-arbitral steps in section 67.1 and 67.2.
- 8 16:23:58 is that correct? is my understanding correct?
- 9 16:24:02 mr bin touq: no, it's been followed. it was previously
- 10 16:24:06 with the previous counsel and with the client
- 11 16:24:10 themselves, but not with us. we got involved in the
- 12 16:24:15 matter in june 2023.
- 13 16:24:17 chairperson: so you're saying that the claims that you're
- 14 16:24:19 bringing here have already been submitted to the
- 15 16:24:21 engineer?
- 16 16:24:24 mr bin touq: no, we do not have the claim, what we have
- 17 16:24:28 filed, submitted to the engineer.
- 18 16:24:29 chairperson: you did not submit it.
- 19 16:24:31 mr bin touq: it was a discussion with the consultant,
- 20 16:24:32 with the contractor, to have discussion as per the
- 21 16:24:38 contract, to have amicable settlement.
- 22 16:24:45 chairperson: okay, but they weren't submitted to the
- 23 16:24:47 engineer?
- 24 16:24:48 mr bin touq: no.
- 25 16:25:16 chairperson: apart from the issue of discussing

1 16:25:19 post-hearing written submissions, i don't have any other
2 16:25:23 questions for the parties, but i don't know, mr smith,
3 16:25:27 do you perhaps have anything further that you wanted to
4 16:25:30 raise with the parties?

5 16:25:32 mr smith: no, there's nothing. i think it's been a quite
6 16:25:37 helpful discussion for me.

7 16:25:38 chairperson: mr mcdougall, do you have anything else?

8 16:25:41 mr mcdougall: no, other than to thank both parties for
9 16:25:43 their patience with my questions. i appreciate it.

10 16:25:49 chairperson: as the parties know, we had left open this
11 16:25:53 issue of whether the parties would be invited to make
12 16:25:58 post-hearing written submissions on any points.

13 16:26:04 at this stage, the tribunal was able to discuss
14 16:26:07 during the break and the tribunal does not feel that we
15 16:26:12 need any further written submissions from the parties at
16 16:26:16 this stage. but i would like to know the parties' views
17 16:26:20 as to whether they want to make further written
18 16:26:23 submissions and if they do, on what exactly.
19 16:26:28 perhaps mr bin touq, if you would like to address
20 16:26:31 this first.

21 16:26:32 mr bin touq: i think it's all the points been clear from
22 16:26:34 our side and i don't see any need to make any further
23 16:26:37 submission.

24 16:26:39 chairperson: ms habib for respondent, what is your view?
25 16:26:49 mr el haddad?

- 1 16:26:51 mr el haddad: actually, we have the same feeling. we
2 16:26:52 share the same feeling.
- 3 16:26:55 chairperson: okay, so you don't see a need for
4 16:26:57 post-hearing written submissions.
- 5 16:27:01 that's a "no"? the court reporter can't get your
6 16:27:03 shaking your head.
- 7 16:27:05 mr el haddad: absolutely.
- 8 16:27:08 mr bin touq: lance, you wanted to add something?
- 9 16:27:11 mr sheeran: am i allowed? i can answer some of these
10 16:27:12 questions that you're asking.
- 11 16:27:14 i've been here since before we decided to have
12 16:27:16 a school, and right through the whole process.
- 13 16:27:20 you asked a question a minute ago. if i'm able to
14 16:27:23 answer it, i can answer it for you.
- 15 16:27:26 chairperson: mr sheeran, i'm not sure what question
16 16:27:30 you're referring to, but we don't -- we haven't provided
17 16:27:35 for you to give testimony today, which would be a whole
18 16:27:39 process. so i'm not sure what question you're referring
19 16:27:45 to. what question are you referring to?
- 20 16:27:47 mr sheeran: you asked a question about whether we had
21 16:27:50 gone about trying to settle this prior to arbitration.
- 22 16:27:55 chairperson: oh, no, that's okay. we don't need to hear
23 16:27:57 more about that at this stage. i think we're fine with
24 16:28:01 respect to that.
- 25 16:28:04 so it sounds like we don't need any post-hearing

- 1 16:28:07 written submissions. with that, i think we can bring
2 16:28:12 the proceedings to a close and in that respect, i have
3 16:28:18 questions that i would like to address to both parties.
4 16:28:21 so mr bin touq, i'm going to ask claimant these
5 16:28:25 questions first.
6 16:28:27 does claimant have any objections to the way the
7 16:28:31 proceedings have been conducted?
8 16:28:35 mr bin touq: no.
9 16:28:36 chairperson: do you agree that the parties have been
10 16:28:38 treated equally and that claimant's right to be heard
11 16:28:41 has been respected?
12 16:28:43 mr bin touq: yes.
13 16:28:46 chairperson: i would also like to ask respondent the same
14 16:28:49 questions.
15 16:28:49 so ms habib, does respondent have any objections to
16 16:28:54 the way the proceedings have been conducted?
17 16:29:03 ms habib: no objection.
18 16:29:06 chairperson: then also do you agree that the parties have
19 16:29:08 been treated equally and that respondent's right to be
20 16:29:12 heard has been respected?
21 16:29:13 ms habib: yes.
22 16:29:16 chairperson: with that, i think we are adjourned.
23 16:29:19 i would just like to thank everybody and thank our court
24 16:29:22 reporter for all their helpful work today. this has
25 16:29:26 been very useful for the tribunal.

1 16:29:29 i'll ask as people exit the hearing, if my
2 16:29:32 co-arbitrators could please stay on with me once
3 16:29:35 everybody else has left. i would appreciate it.
4 16:29:43 mr el haddad: ms kirby, just one question, if you don't
5 16:29:44 mind. would you share with us the recording? can we
6 16:29:48 ask for the recording?
7 16:29:49 chairperson: yes, the transcript will be available to
8 16:29:53 everybody that is here, the parties and the arbitral
9 16:29:57 tribunal, we will receive the transcript. so you will
10 16:30:00 have the transcript.

11 16:30:01 mr el haddad: perfect. thank you.
12 16:30:03 ms habib: thank you.
13 16:30:04 mr bin touq: thank you.
14 16:30:04 chairperson: anything else before we sign off, mr bin
15 16:30:06 touq?

16 16:30:07 mr bin touq: no, thank you.

17 16:30:09 chairperson: all right. i think we're adjourned. thank
18 16:30:10 you all very much.

19 16:30:19 (4.30 pm)