

KSA Courts of Appeal: significant development in process for appeals

Emad Salameh - Partner - Litigation

e.salameh@tamimi.com - Riyadh

Abubaker Jeeballah - Senior Associate - Litigation

a.jeeballah@tamimi.com - Riyadh



Overview

The judicial framework of the Kingdom of Saudi Arabia is witnessing remarkable developments on many fronts. Commercial courts, previously under the umbrella of the administrative courts, now operate independently. Labour Courts have been established to consider labour disputes, previously heard by the Panels for Settlement of Labour Disputes. Steps have been taken to accelerate dispute resolution including the adoption of an electronic notification service. Development also extends to the form of judgments which are now required to be reasoned in all tiers of the system.

Perhaps most notable among the developments that have taken place in the judicial field are those in the process for pleadings before the Courts of Appeal. Previously the Courts of Appeal considered all objections, raised before them from the First Instance Courts, purely through written submissions with limited or no scope for verbal representations. There has been a recent paradigm shift in this process which we explain below. Consequently, this article will tackle the following:

1. old litigation process for appeals before the Courts of Appeal;
2. new legislative instruments, pursuant to which oral pleadings before Courts of Appeal can be advanced;
3. cases where verbal pleadings before the Courts of Appeal are allowed following regulatory developments; and
4. key gateway to securing an appeal hearing.

The old appeals process

Objecting to and appealing judgments issued by the Court of First Instance was previously done by way of submission of a statement of appeal by the appellant to the court in which the judgment originated. The Court of First Instance which issued the original judgment would then review the statement of appeal and determine whether to amend or affirm the judgment. Where the court affirms its original position, it would then refer that judgment to the Court of Appeal for consideration and approval. The process would be by means of written submission. The litigants were not allowed to plead before the Court of Appeal. However, following the recent changes in procedural practice, the parties to the lawsuit are now allowed to plead before the Court of Appeal, as further explained below.

The new process: oral pleadings before Courts of Appeal can be advanced

A suite of Ministerial Circulars has been issued to facilitate pleadings before the Courts of Appeal as well as the new Implementation Regulation of the Procedures of Appeal.

Ministerial circulars

The Circulars expand the authority of the Appeal Courts to include determination of appeals by way of oral hearings and written submissions pursuant to the provisions of the Civil Procedures Law and the Criminal Procedures Law.

The Circulars in question provide that the Courts of Appeal shall, in accordance with the Law of Civil Procedures and the Law of Criminal Procedures, start hearing the objections to appeals against decisions of the Courts of First Instance in commercial and criminal cases in order to expedite dispute resolution and enhance confidence in the judicial process.

Appellate procedures implementing regulation ('Regulation')

The appellate oral hearing stage is a development that requires its own set of procedures. To this end, the implementation of the new appellate procedure was adopted through the Minister of Justice Decision No. 5134 dated 21/9/1440H. The new Regulation provides clarification on:

1. the practical application of the relevant provisions of the Law of Civil Procedures;
2. a governing framework for appeals that takes into account existing statutory provisions, general principles and rules; and
3. describes the nature of the appeal process itself.

The Regulation also polices the process of objection on appeal, from filing a brief in support of the objection before the Court of First Instance through to the pronouncement of the Appeal Judgment.

Cases where verbal pleadings before the Courts of Appeal are allowed

Generally, Court of First Instance rulings are subject to appeal (by way of written submission or pleadings) with the exception of rulings on small claims of up to SAR 20,000 (US\$ 5,333.33).

The new Circulars provide that the following categories of appeal can now be advanced through oral hearings:

1. Commercial Circuits: judgments issued by a single judge and judgments issued in commercial cases involving commercial disputes between merchants, as well as cases which are brought against merchants by reason of their business where the value of the claim exceeds SAR 1 million (US\$ 266,666.66);
2. Civil Circuits: cases involving monetary claims, including the value of real estate, where the value of the claim exceeds SAR 10 million (US\$ 2,666,666.66), claims of invalidity of the arbitral award, enforcement disputes challenging writs of execution involving more than SAR 100 million (US\$ 26,666,666.66) and cases brought before the courts in respect of real estate investment;
3. Personal Status Circuits: cases involving affirmation and negation of paternity, estate division, accounting by a liquidator where the total value of assets exceeds SAR 100 million (US\$ 26,666,666.66), claiming dues in Waqf or will or objection of dues therein, claims for termination of Waqf or a will, challenging the responsibilities of bailiffs, sponsors and trustees, objection of heirs determination writ and guardianship on minors, claim for rejection of marriage contract and cases of prevention of marriage by guardians;
4. Labour Circuits: cases filed for implementation of sanctions stipulated in the Labour Law and labour matters involving claims in excess of SAR 1 Million (US\$ 266,666.66);
5. Criminal Circuits: cases seeking destruction by Hadd or as discretionary punishment, where no judgment of destruction has been issued, such as the enforcement of penalties under article 37 of the Anti-Drug and Mental Health Law or cases seeking death penalties or less, on which no judgment has been issued and cases heard at anti-corruption circuits.

In addition to the abovementioned cases, the Courts of Appeal have discretionary authority to hear objections and appeals by way of pleading in cases other than the abovementioned. This discretion includes the ability to intervene and require oral presentations where it is in the interests of efficiency and justice to do so.

It should also be noted that the Circulars advance a working assumption that where pleadings are advanced by way of written submission and orally in the same case, preference should be given to consolidating the oral pleadings process into written submissions.

Key gateway to securing an appeal hearing

It should be noted that the Court of Appeal will not consider the appeal by way of pleadings unless such request has been explicitly stated in the statement of appeal, as Article (2) of the Regulation, stipulates that if the appellant has not elected in his/her application for the appeal to be considered by oral pleadings or by way of written submission, the appeal shall be considered by way of the latter.

The statement of appeal to be filed at the Court of First Instance shall contain the information specified in article (2) of the Regulation. The Court, which issues the judgment, shall peruse the statement of appeal, after submission of a copy to the Court, upon expiry of the period of appeal. If the Court decides to reconsider the judgment, it will request the file of the case from the concerned department within five days from the end of the period of appeal. If the Court does not request the file within the requisite period,

the concerned department shall refer the file to the Court of Appeal on the second day.

Conclusion

Oral pleadings before the Court of Appeal embody the essence of two-tier litigation and gives litigants an opportunity to present their arguments, claims and evidence before an entirely different judicial authority from the Court of First Instance that issued the contested judgment. Since the option allows for judicial review of the Court of First Instance decisions, the Courts of First Instance will be more inclined to give reasoned decisions with a sound legal underpinning.

This change will contribute to strengthening the trust of local and international investors in the Saudi Judicial System and the tools and mechanisms that protect their investment. This development is in line with the Kingdom's Vision 2030, which aims to facilitate and protect the flow of local and international investment and enhance the competitiveness of the Kingdom of Saudi Arabia.

Al Tamimi & Company's [Litigation and Dispute Resolution team](#) has the capability to provide advice to clients on all types of litigation matters. For further information, please contact [Emad Salameh](#) (e.salameh@tamimi.com) or [Abubaker Jeeballah](#) (a.jeeballah@tamimi.com)