THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ORATIO

Claimant

and

ORANGIA

Defendant

ORDER WITH REASONS OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON the Claimant's Arbitration Claim dated 3 November 2025 seeking an order pursuant to Article 41 of DIFC Law No. 1 of 2008 (the "Arbitration Law") setting aside the Final Award dated 11 August 2025 (the "Set Aside Application" or the "Application") made in DIAC Case No. 230186 (the "Final Award")

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at a hearing held on 26 February 2026 before H.E. Justice Shamlan Al Sawalehi (the "Hearing")

AND UPON reviewing the parties' submissions and skeleton arguments, and oral submissions

IT IS HEREBY ORDERED THAT:

1. The Set Aside Application is dismissed.

2. The Applicant shall pay the Respondent's costs of the Application. The Respondent shall submit statement of costs not exceeding 3 pages within 5 days of this Order.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 2 April 2026
At: 2pm

SCHEDULE OF REASONS

Introduction

1. This is an Arbitration Claim made pursuant to Article 41 of the DIFC Arbitration Law seeking to set aside the Final Award. The Award was made in favour of the Defendant.

2. The Applicant advances three grounds for the Application. In summary, the Applicant contends that the Tribunal decided the dispute on the basis of a contractual construction, in particular by reference to Addendum 2, which was not advanced by either party and which the Applicant argues had no fair opportunity to address. On that basis they claim:

(a) they were unable to present the case within the meaning of Article 41(2)(a)(ii);

(b) the Award deals with matters beyond the scope of the submission to arbitration within the meaning of Article 41(2)(a)(iii); and

(c) the Award is in conflict with public policy within the meaning of Article 41(2)(b)(iii).

3. The Applicant also seeks declaratory relief concerning the proper route for recognition and enforcement of a DIFC-seated award.

4. The Respondent resists the claim in full and submits that what is presented as an annulment challenge no more than an attempt to revisit the Tribunal's reasoning on the merits.

5. Please note Applicant/Claimant and Respondent/Defendant are used interchangeably in this Order.

6. For the reasons set out below, the Set Aside Application is dismissed.

Background

7. The background to the present claim has been set out in previous orders and the parties' written submissions. It is not necessary to repeat it exhaustively. It is sufficient to set out the facts necessary to determine this Application.

8. The underlying dispute concerned a Sale and Purchase Agreement dated 21 December 2020 (the "Original Agreement") pursuant to which the Claimant agreed to sell to the Defendant Villa in Dubai (the "Property").

9. The parties subsequently entered into a document described as "Addendum #1 to terms & conditions of Property sales purchase agreement" ("Addendum 1"). In broad terms, Addendum 1 contemplated either the provision of a letter of credit for the purchase of rebar by 30 June 2021 or an additional payment of AED 6,000,000.

10. On 22 May 2021, the parties entered into a further document referred to as "Addendum 2". It is common ground that Addendum 2 was executed. The parties' disagreement in the arbitration concerned its legal effect and operative consequences.

11. It is also common ground that the Respondent paid AED 13,000,000 in instalments and took possession of the Property. It subsequently learned that the Property had been made subject to a provisional attachment issued by the Dubai Courts at the request of Oriola . That attachment was later lifted, but the parties' relationship deteriorated and the transaction was not completed. The Applicant later repossessed the Property.

12. On 19 July 2023, the Defendant commenced arbitration before DIAC. The seat of the arbitration was the DIFC. The arbitration was fully contested. Both sides were represented. There were pleadings, documentary evidence, witness evidence, cross- examination, and post-hearing submissions.

13. On 11 August 2025, the Tribunal issued its Final Award. The Tribunal granted relief in favour of the Defendant. The Claimant subsequently filed the present claim seeking to set the Award aside.

Procedural History of the Claim

14. The Claimant invoked Article 41 and advanced three grounds for the Set Aside Application:

(a) inability to present his case;

(b) matters beyond the scope of the submission to arbitration; and

(c) conflict with public policy.

15. The Claimant also sought declaratory relief concerning the proper mechanism for enforcing a DIFC-seated award and the asserted absence of jurisdiction of the onshore Dubai Courts to enforce such an award without prior recognition by the DIFC Courts.

The Applicant's Submissions

16. The essence of the Applicant's arguments is that the Tribunal found in favour of the Respondent on a basis not advanced by either side.

17. The Applicant says that his position in the arbitration was not that Addendum 1 and Addendum 2 were invalid ab initio. Rather, his case was that both addenda were valid and binding when executed, but that Addendum 2 later became ineffective or unenforceable due to the other party's alleged breaches.

18. The Applicant points in particular to the position recorded in the Award that, although both addenda were valid when made, Addendum 2 later became ineffective, and the parties therefore reverted to the Original Agreement together with Addendum 1 as the operative contractual framework.

19. By contrast, the Defendant's position in the arbitration, as summarised in the Award, was that the dispute should be governed exclusively by the Original Agreement. The Defendant contended that Addendum 1 did not constitute a final binding agreement and that Addendum 2 never came into force.

20. On that footing, the Applicant submits that the Tribunal went beyond the parties' cases by treating Addendum 2 as a valid and operative contractual framework for determining the parties' rights and liabilities.

21. In support of the Article 41(2)(a)(ii) ground, the Applicant submits that he was deprived of a fair opportunity to address the case on which the Tribunal in fact decided the arbitration.

22. The Applicant submits that the Tribunal's questions about Addendum 2 came as a surprise because neither side was relying on Addendum 2 in the manner ultimately adopted by the Tribunal. The Applicant emphasises that the complaint is not that the Tribunal preferred the Respondent's interpretation over his, but that the Tribunal adopted a basis of decision that had not been put forward.

23. In support of the Article 41(2)(a)(iii) ground, the Applicant submits that no claim for breach of Addendum 2 was pleaded or advanced by the Respondent, with the result that the Tribunal decided a matter not contemplated by, or falling outside, the scope of the submission to arbitration.

24. In support of the Article 41(2)(b)(iii) ground, the Applicant submits that it is contrary to fundamental principles of natural justice and procedural fairness, and therefore contrary to public policy, for a tribunal to determine a dispute against a party on the basis of an argument not advanced by the opposing party and in relation to which the party had no fair opportunity to respond.

25. The Applicant also sought declaratory relief concerning enforcement. He submitted that because the award was DIFC-seated, the DIFC Courts constituted the exclusive route for prior recognition and that the onshore Dubai Courts did not have jurisdiction to recognise or enforce the Award in the absence of prior DIFC recognition.

The Respondent's Submissions

26. The Respondent submits that the Applicant's challenge is misconceived and amounts to no more than a merits complaint dressed up as a Set Aside Application.

27. The Respondent accepts that the parties advanced different positions as to the legal effect of the contractual documentation, but submits that the existence, validity, effect and interpretation of Addendum 2 were plainly before the Tribunal and formed part of the very dispute submitted for determination.

28. The Respondent case was that the arbitration concerned the parties' rights and obligations under the Original Agreement and its addenda, and that the Tribunal was asked to determine which contractual framework governed and what obligations arose from it.

29. The Respondent submits that the Addenda, including Addendum 2, were expressly referred to by the Applicant's own counsel at the hearing, discussed in oral submissions, put to the Applicant's in cross-examination, and then made the subject of express post- hearing submissions.

30. The Respondent further submits that the Tribunal was entitled to reach its own conclusions on the evidence and contractual materials before it and was not confined to selecting one party's analysis in its entirety.

31. As to Article 41(2)(a)(ii), the Respondent submits the Applicant was plainly not unable to present his case. He participated fully, was legally represented throughout, responded to the Tribunal's questions, and made written submissions on the very issue of Addendum 2.

32. As to Article 41(2)(a)(iii), the Respondent says the Tribunal did not decide a new dispute, a new contract, or a new cause of action, but the very contractual dispute submitted to it.

33. As to public policy, the Respondent submits that no autonomous public-policy issue arises. At most, the Claimant alleges procedural unfairness. Once that allegation fails on the facts, the public-policy ground necessarily fails with it.

34. The Respondent also submits that the Applicant's request for declaratory relief is misconceived and falls outside the proper scope of an Article 41 claim. They further submit that the task of this Court in the present proceedings is to determine whether the Award should be set aside, not to issue advisory declarations concerning the jurisdiction of another court.

Applicable Legal Framework

35. The governing provision is Article 41 of the DIFC Arbitration Law, which sets out the exclusive grounds upon which an arbitral award may be set aside.

36. It is well established that Article 41 does not create a merits appeal. Article 41(2)(a)(ii) is concerned with whether the party making the application was *"otherwise unable to present their case"*. That provision protects procedural fairness. It is not engaged merely because a tribunal rejects a party's submissions or reasons to a conclusion not identical to either side's preferred formulation.

37. Article 41(2)(a)(iii) is concerned with jurisdictional excess. The relevant question is whether the tribunal dealt with a dispute not contemplated by, or falling outside, the submission to arbitration, or contained decisions on matters beyond that scope. It is not enough to show that the tribunal may have erred in construing the contract within the scope of the dispute submitted.

38. Article 41(2)(b)(iii) is exceptional. The public-policy ground is not a residual merits appeal. It is engaged only where the Award is in conflict with a fundamental principle of justice or public policy recognised by the relevant legal order.

39. Before turning to the Applicant's specific grounds, it is appropriate to emphasise the limited nature of the Court's supervisory jurisdiction under Article 41. The Court is not concerned with whether the Tribunal's findings of fact or interpretations of the contract were right or wrong. Its task is confined to determining whether one of the recognised statutory grounds for setting aside an award has been established.

Discussion and Analysis

40. The central question raised by the Applicant is whether the Tribunal decided the dispute on a basis that had not been put to the parties, or whether it reached its own conclusions on issues, documents and arguments that were already before it in the arbitration.

41. Put differently, the question is whether the Tribunal introduced a new legal basis for the decision without giving the Applicant a fair opportunity to address it, or whether the Tribunal merely assessed the contractual materials and the parties' submissions and arrived at its own conclusions within the scope of the dispute submitted for determination. In my judgment, the latter is what occurred.

42. Addendum 2 was plainly before the Tribunal. The contractual documentation forming the subject matter of the arbitration included the Original Agreement and its subsequent addenda, including Addendum 1 and Addendum 2. The parties' pleadings, evidence and submissions addressed the existence, validity and legal consequences of those instruments. In those circumstances, Addendum 2 cannot properly be characterised as a peripheral or incidental document. It formed part of the contractual framework that the Tribunal was required to examine in determining the parties' dispute.

43. The Final Award records the parties' respective positions concerning the addenda. The Defendant's position in the arbitration, as arbitration claimant, was summarised by the Tribunal at paragraphs 136 to 139 of the Final Award. There the Tribunal records the Defendant's case as being that Addendum 1 did not constitute a binding agreement and that Addendum 2 never came into force, with the consequence that the dispute should be determined exclusively by reference to the Original Agreement.

44. The Applicant's own position in the arbitration, as arbitration respondent, was summarised by the Tribunal at paragraphs 163 to 169 of the Final Award. The Final Award records that the Applicant contended that Addendum 1 and Addendum 2 were valid and binding when executed, but that Addendum 2 subsequently became ineffective or unenforceable due to the Defendant's alleged breaches, with the result that the parties reverted to the Original Agreement together with Addendum 1.

45. It is therefore apparent from the Final Award itself that the existence, validity and legal effect of Addendum 2 formed part of the dispute before the Tribunal. Most significantly, the Tribunal issued a communication inviting submissions on the "Validity of Addendum No. 1 and Addendum No. 2". That alone evidences that the Tribunal made plain that the legal effect of Addendum 2 was a live issue requiring submissions. It is impossible, in those circumstances, to maintain that the Applicant had no notice that Addendum 2 and its effect were matters the Tribunal considered relevant to its determination.

46. Furthermore, the Applicant's counsel referred expressly to both addenda and described them collectively with the original agreement as the contractual architecture relevant to the dispute. Counsel then addressed clause 4 of Addendum 2 and the joint venture arrangement. The Tribunal put questions to counsel concerning the completion date appearing in Addendum 2. Counsel answered those questions on the merits.

47. The Applicant was also questioned in cross-examination about the financial mechanics of Addendum 2, the relation between AED 31 million and AED 37 million, and the legal and commercial significance of the AED 6 million component and related arrangements. Again, those matters were engaged with on the merits.

48. It follows that Addendum 2, its validity, its content, its interaction with Addendum 1, the consequences of non-performance, the completion date and the price mechanism were all before the Tribunal.

49. In those circumstances, I cannot accept the Applicant's characterisation of Addendum 2 as a document merely in the background and not part of the legal controversy submitted for determination. The Tribunal was therefore entitled to form its own conclusions.

50. Once it is recognised that Addendum 2 and its legal effect were part of the dispute before the Tribunal, the Applicant's challenge encounters a further difficulty. A tribunal is not obliged to choose between the parties' formulations in a rigid either/or fashion. It is entitled, and indeed required, to assess the contractual documents, the evidence and the parties' conduct for itself and to arrive at its own conclusions on the issues submitted. That is precisely what the Tribunal did.

51. The Final Award shows that the Tribunal considered the parties' arguments concerning the invalidity or inoperativeness of Addendum 2. The tribunal found that Addendum 2 constituted a valid and binding amendment.

52. That is not evidence of denial of due process. It is evidence of the Tribunal doing exactly what tribunals are appointed to do: deciding which of the competing submissions should be accepted, rejected or reformulated in the course of resolving the dispute submitted to them.

53. The Applicant submits that because the Defendant's case in the arbitration did not rely on Addendum 2 as the operative contractual basis ultimately adopted by the Tribunal, the Tribunal could not properly conclude that Addendum 2 was valid and operative without first giving the Applicant a fair opportunity to address that route to decision. I do not accept that. The issue before the Tribunal was not limited to a binary question of whether either side's characterisation had to be accepted broadly. The wider issue was which contractual framework governed and what legal consequences followed from the parties' conduct. That issue was plainly before the Tribunal.

54. The Tribunal's reasoning did not amount to introducing a new dispute or cause of action. The Tribunal was required to determine the parties' rights and obligations arising from the Original Agreement and its subsequent amendments. In doing so, it was entitled to consider the contractual documentation, the evidence and the parties' submissions, and to accept, reject or reformulate those submissions as necessary in order to resolve the dispute before it. Whether the Tribunal's conclusions were correct on the merits is not a matter for this Court. The relevant question is whether the Tribunal determined a dispute outside the scope of the submission to arbitration or did so in breach of procedural fairness. I am satisfied that it did neither.

Article 41(2)(a)(ii): inability to present the case

55. Against that background, the Applicant's case under Article 41(2)(a)(ii) cannot succeed. The Applicant was represented throughout the arbitration, filed pleadings and evidence, participated in a fully contested hearing, and made post-hearing submissions. The Tribunal also invited further submissions concerning the contractual documentation, including Addendum 2. In those circumstances, it cannot be said that the Applicant was "otherwise unable to present his case" within the meaning of Article 41(2)(a)(ii).

56. I am therefore unable to accept that the Applicant was "otherwise unable to present his case". The proposition that relief granted on a basis that was neither pleaded nor argued may, in a proper case, amount to a denial of the opportunity to present the case is unobjectionable. But the present case is not such a case. Here, the document in question, its validity, its legal effect, and its interaction with the broader contractual framework were not hidden from either side and were the subject of evidence, questioning and submissions.

57. Nor am I persuaded by the Applicant's reliance on the fact that the Tribunal's questions came as a "surprise". A tribunal's testing of positions and probing of documentary consequences during a hearing does not, without more, establish a procedural defect. On the contrary, it is part of the ordinary process by which a tribunal explores the issues before it.

58. It follows that the Applicant has not established any serious denial of the opportunity to present his case, let alone one causing the kind of prejudice capable of engaging Article 41(2)(a)(ii).

Article 41(2)(a)(iii): scope of submission to arbitration

59. The Applicant's case under Article 41(2)(a)(iii) also fails. This ground concerns jurisdictional excess. It is engaged where the tribunal deals with a dispute not contemplated by the submission to arbitration or decides matters outside that scope.

60. The dispute submitted to the Tribunal was the parties' dispute arising out of the Original Agreement and its subsequent addenda and the consequences of the failed transaction. The existence and effect of Addendum 2 were squarely within that dispute.

61. The Tribunal did not decide a different transaction, a different contract, or a different controversy. It did not introduce an alien cause of action

or determine a matter wholly absent from the arbitration. It determined the legal effect of the very contractual materials placed before it and the consequences of the parties' conduct by reference to those materials.

62. The Applicant's complaint that no claim framed expressly as a claim for breach of Addendum 2 was pleaded is not sufficient to establish jurisdictional excess. Arbitral tribunals determine disputes, not merely the labels attached to them by the parties. Where the dispute submitted for determination concerns the parties' rights and obligations arising out of a contractual relationship and its subsequent amendments, the tribunal does not exceed the scope of its jurisdiction simply because it articulates the legal route to its conclusion in a manner different from that advanced by either party.

63. The Tribunal's determination that Addendum 2 constituted a valid and binding amendment, and its subsequent reasoning all fell within the scope of the parties' dispute submitted for determination.

64. The Applicant's challenge under Article 41(2)(a)(iii) is therefore, in substance, no more than a challenge to the Tribunal's reasoning on the merits. Article 41(2)(a)(iii) is not available for that purpose.

Article 41(2)(b)(iii): public policy

65. The Applicant's reliance on Article 41(2)(b)(iii) does not add anything of substance. The public-policy argument is put entirely by reference to the same alleged procedural unfairness said to arise from the Tribunal's treatment of Addendum 2. The Applicant has not identified any separate rule, doctrine or principle of public policy violated by the Final Award beyond the complaint already addressed.

66. The public-policy ground under Article 41(2)(b)(iii) is exceptional. Nothing in the present case approaches that threshold.

67. The Applicant also seeks declarations concerning the proper route for recognition and enforcement of a DIFC-seated award and the asserted lack of jurisdiction of the onshore Dubai Courts to enforce such an award without prior DIFC recognition.

68. In light of the dismissal of the Applicant's Set Aside Application, there is no impediment under the DIFC Arbitration Law to allow the recognition and enforcement of the Final Award.

Conclusion

69. I have considered all other arguments advanced by the parties, whether or not expressly addressed above.

70. The Set Aside Application is dismissed.

71. The Applicant shall pay the Respondent's costs of the Application. The Respondent shall submit a statement of costs not exceeding 3 pages within 5 days of this Order