IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 95 OF 2025 (DDJ)

Neutral Citation Number: [2025] CIGC (FSD) 99

BETWEEN:

(1) HUNGERSTATION HOLDING LIMITED
(2) HUNGERSTATION LLC

PLAINTIFFS

AND

NINJA HOLDING

DEFENDANT

Before: The Hon. Justice David Doyle

Appearances: Michael Wingrave of Dentons for the Defendant

Philip Marshall KC instructed by Jonathon Milne and Liberty Wells of Conyers Dill & Pearman LLP for the Plaintiffs

Heard: 2 October 2025

Draft Judgment Circulated: 14 October 2025

Judgment delivered: 15 October 2025

251015 In the matter of Hungerstation et al – FSD 95 of 2025 (DDJ) - Judgment

Determination of an application to stay proceedings against a defendant on the ground of forum non conveniens

JUDGMENT

Introduction

1. On 2 October 2025 there was before the court a summons dated 12 May 2025 from the Defendant seeking an order that the Plaintiffs' claim be stayed on the ground of *forum non conveniens* (the "Summons").

2. Mr Michael Wingrave appeared on behalf of the Defendant and Mr Philip Marshall KC for the Plaintiffs. I am grateful to counsel for their valuable assistance to the court in the form of their comprehensive written and oral submissions.

3. The Defendant's application for a stay was initially on the basis that The Kingdom of Saudi Arabia ("KSA") was an available alternative forum.

4. The Defendant appeared to have changed tack in its written submissions and made submissions on the Dubai International Financial Centre ("DIFC") being the appropriate available forum. At the hearing it appeared that Mr Wingrave's focus was on KSA and then in the alternative DIFC.

5. The First Plaintiff exists under the laws of the DIFC in Dubai, United Arab Emirates, and the Second Plaintiff exists under the laws of the KSA. The Defendant is incorporated under the laws of the Cayman Islands.

6. The first issue I have to decide is whether the KSA is an available alternative forum for the case against the Defendant. I also have to consider whether it is also open now to the Defendant to suggest that the DIFC is also an available forum.

The Law

7. Adopting Rule 41 of Dicey, Morris & Collins *The Conflict of Laws* Sixteenth Edition ("Dicey") to the Cayman Islands I state the relevant law as follows:

A Cayman court has power to order a stay of proceedings commenced as of right on the basis that Cayman is an inappropriate forum (*forum non conveniens)*, if the defendant shows there to be another court with competent jurisdiction which is clearly or distinctly more appropriate than Cayman for the trial of the action, unless the plaintiff can show that it is unjust for it to be deprived of the right to trial in Cayman.

8. Lord Goff in *Spiliada Maritime Corporation v Consulex Ltd* [1987] AC 460 at 476 set out the general principle that has been applied subsequently in the Cayman Islands:

> "The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is appropriate for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all parties and the ends of justice."

9. In the case presently before the court the Defendant is a company incorporated under the laws of the Cayman Islands and has been served as of right. The Defendant has to show, on a balance of probabilities, that there is another available forum which is clearly or distinctly the more appropriate.

10. Adopting the words of Lord Goff at 476-477 of *Spiliada* to a local Cayman context it is plain that the burden is on the Defendant in the case presently before me not just to show that Cayman is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the Cayman forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in Cayman as of right.

11. The Defendant has to show that there is an available alternative forum and it is more appropriate. If the Defendant does not show there is an available forum then the court does not need to consider whether it is the most appropriate.

12. As noted at 12-031 of Dicey the first limb of the *Spiliada* test requires it to be shown that the foreign court is "available". A foreign court will be considered to be "available" to a plaintiff if by the time of the application for a stay, it would be open to the plaintiff to initiate proceedings against the defendant before that court. This requirement means that the foreign court must have jurisdiction (personal and subject matter) to determine the plaintiff's claim. The learned authors cite high authority in support namely *Lubbe v Cape Plc* [2000] 1 WLR 1545 (HL) and *Unwired Planet International Ltd v Huawei Technologies (UK) Ltd* [2020] UKSC 37 at [96]-[98]. The authors add that an undertaking by a defendant to submit to the jurisdiction of a foreign court can make the foreign court available even though it would not have been so without the undertaking. In this case the undertaking point is academic as there is no undertaking and even if there was there is no expert evidence as to whether such would confer jurisdiction on the courts of the KSA.

13. If availability is established then the court goes on to consider whether the available alternative forum is the most appropriate. I endeavoured to summarise the general law on connecting factors in *Taiping Trustees Limited* (FSD unreported judgment – 29 January 2024) at [3] to [15].

14. Even if the court concludes that the foreign court is more appropriate by reference to the connecting factors the Cayman court will nevertheless retain jurisdiction if the plaintiff can show by cogent evidence that there is a real risk that it will not be able to obtain substantial justice in the appropriate foreign jurisdiction.

15. Despite these various stages I note Popplewell LJ's comment in *Limbu v Dyson Technology* [2024] EWCA Civ 1564 at [23] that the process is:

> "… juridically a single holistic exercise in seeking to identify where the case can most suitably be tried in the interests of the parties and for the ends of justice."

The Evidence

16. I have considered the factual evidence in support of and in opposition to the Summons.

17. I have also considered the expert evidence and the points in dispute between the experts.

Submissions

18. I have considered all the written and oral submissions and do not set them out in this relatively short judgment but have full regard to them. It should be clear from the following sections of this judgment which submissions I have rejected and which submissions I have accepted.

The Statement of Claim

19. In the Statement of Claim, the First Plaintiff ("HHL") is said to wholly own the Second Plaintiff ("Hungerstation"). The following picture is painted in the pleading.

20. HHL through Hungerstation carried on a successful business in the Middle East region focusing on restaurant food delivery, grocery delivery and quick commerce.

21. The online platform which Hungerstation operates in Saudi Arabia was founded by Ibrahim Al-Jassim ("Mr Al-Jassim") in about 2012.

22. In about 2015 Mr Al-Jassim's start up business attracted large-scale investment from Food Delivery Holding 12 SARL a company incorporated in Luxembourg ("FDH").

23. To facilitate FDH's investment the business was transferred to Hungerstation whose shares were acquired by HHL, whereupon FDH and Mr Al-Jassim became respectively the 63% shareholder and the 37% shareholder in HHL.

24. On 26 October 2015 Mr Al-Jassim, FDH and HHL entered into a shareholders agreement dated 26 October 2015 (the "Shareholders Agreement"). It was subsequently amended on 19 June 2016. Clause 14.1 contained a confidentiality covenant.

25. It is pleaded that Mr Al-Jassim owed to HHL various duties "under the laws of the Dubai International Financial Centre ("DIFC")":

- a duty to promote the success of HHL
- a duty of loyalty
- a duty to avoid conflict of interests

- a duty not to use HHL's property, information or opportunities for his own or anyone else's benefit in the absence of consent or full disclosure and no objection
- a duty only to use information obtained in confidence from HHL or Hungerstation for the benefit of HHL.

26. The pleading alleges breaches of these duties by Mr Al-Jassim. There is reference to the "First Arbitration" and a partial award on 1 September 2022.

27. Section D of the pleading is under the heading "Mr Al-Jassim Embarks on a New Illicit Plan to Compete with HHL and Hungerstation using Ninja".

28. There is reference to a funding round and the Riyad Capital Presentation.

29. It is pleaded that it can be inferred that Mr Al-Jassim, directly or indirectly:

(1) founded the First Defendant (described simply as "Ninja" in the pleading)
(2) and/or owns and/or controls Ninja
(3) and/or is the de facto chief executive officer and a de facto director of Ninja
(4) further or alternatively became involved in Ninja
(5) further or alternatively acquired an interest in Ninja.

30. At paragraph 19 there is reference to a conspiracy between (at least) Ninja and Ibrahim Mohammed Al-Jassim (referred to as "Cousin Ibrahim") "with the involvement of Mr Al-Jassim".

31. At paragraph 24.1 there is reference to matters of Cayman law which is stated to be "the governing law as regards questions of attribution of knowledge and intention to Ninja."

32. Section F refers to the unlawful conduct of Mr Al-Jassim.

33. Section G sets out the claims against Ninja.

34. At paragraph 28 there is pleaded "a conspiracy to injure HHL and Hungerstation by unlawful means entered into between (at least) Mr Al-Jassim, Ninja and Cousin Ibrahim".

35. At paragraph 29 there is reference to "means that were unlawful" namely:

(1) breaches of Mr Al-Jassim's obligations under the Shareholders Agreement

(2) breaches of Mr Al-Jassim's director's duties

(3) breaches of Mr Al-Jassim's general obligation of confidentiality

(4) breaches of Ninja's own duty of confidence

all as pleaded in the Statement of Claim.

36. At paragraph 30 details are given as to how the "intention to injure is to be inferred".

37. Paragraph 31 puts some meat on the bones of the averment that Ninja breached its own duty of confidence.

38. Paragraph 32 pleads that Ninja has unlawfully interfered with the business of the Plaintiffs by causing or inducing breaches of the Shareholders Agreement and/or breaches of confidence.

39. At paragraph 34 it is averred that Ninja assisted in the pleaded breaches of fiduciary duty by Mr Al-Jassim.

40. There is reference to the assistance being dishonest.

41. Section H is entitled "Loss and remedies". The Plaintiffs claim the following remedies:

(1) Damages

(2) An account of profits made by Ninja in respect of gains made by Ninja pursuant to its dishonest assistance of Mr Al-Jassim's breaches of fiduciary duty and/or breach of its "duty confidence"

(3) A final injunction to give effect to the non-compete covenant and the confidentiality covenant and to prevent continued misuse of the Plaintiffs' confidential information

(4) An order requiring Ninja to give full particulars of (a) by what means and in what manner the Plaintiffs' confidential, proprietary and competitively sensitive information was transferred to its systems or otherwise came into its possession and (b) the purposes to which it was put.

(5) An order requiring Ninja permanently to delete all of the Plaintiffs' confidential, proprietary and competitively sensitive information as well as any materials derived from such information.

42. There are serious allegations against the Defendant. It is said that the Defendant was created and is being used as a vehicle for an illicit scheme. A scheme to pursue business in competition with that of the Second Plaintiff in breach of obligations owed to the First Plaintiff by Mr Al Jassim who is said to be the founder, de facto CEO and director, ultimate beneficial owner and controller of the Defendant. It is said that the relevant obligations consist principally of contractual obligations under the Shareholders Agreement governed by English law (which in this area is said to be similar to Cayman law) and directors' duties owed under DIFC law in the United Arab Emirates, with the claims also raising issues of attribution under Cayman law.

Is the KSA an available forum or if not is the DIFC an available forum?

43. The initial evidence (both factual and expert) filed in May 2025 in support of the Summons sought a stay in favour of the alternative forum of the KSA. In late June 2025 the Defendant seemed to change tact and sought in the alternative to persuade the court "to refuse to accept jurisdiction of the claim in favour of KSA or in favour of DIFC arbitration and to stay the present action."

44. The Shareholders Agreement is stated to be between Ibrahim Al-Jassim, Food Delivery Holding 12 SARL and Hungerstation SPC Limited stated to be a company existing under the laws of the DIFC in Dubai, United Arab Emirates with commercial registration No 1928 pursuant to a certificate of incorporation dated 10 August 2015.

45. In the Statement of Claim at paragraph 1 it is stated that the Plaintiff, Hungerstation Holding Limited, was formerly known as Hungerstation SPC Limited. It appears therefore that the First Plaintiff is a party to the Shareholders Agreement but the Defendant is not.

46. Under clause 17.1 of the Shareholders Agreement it is stated that the agreement shall be governed and construed in accordance with English law.

47. In respect of disputes between the parties clause 17.2 (a) requires the parties to "first endeavor an amicable settlement by good faith consultation and negotiation."

48. Clause 17.2 (b) provides that:

> "In the event that the Parties are unable to resolve the Dispute by good faith consultation and negotiation within one (1) month from the date the Dispute has arisen, the Dispute shall be referred to and finally settles (sic) by arbitration under the DIFC/LCIA Arbitration Rules (which rules are deemed incorporated by reference in this Agreement), by one or more arbitrators appointed in compliance with the rules."

49. Under clause 17.2 (c) the arbitration shall take place in the English language in Dubai, UAE.

50. I should stress that the Defendant is not a party to the Shareholders Agreement which contains the arbitration clauses.

51. In its written submissions dated 5 September 2025 at paragraph 3 stated that the stay application "when conceived" sought a stay solely in favour of KSA but "the Defendant now also seeks a stay on the ground of FNC in favour of the Dubai International Financial Centre ("DIFC")". This seems to be on the basis of the Shareholders Agreement. In paragraph 3 the Defendant appears to seek a stay in favour of the DIFC. However a few lines later the Defendant did not plump at paragraph 4 for a single appropriate alternative forum but tried to hedge its bets and stated:

> "It will be the Defendant's case that KSA and/or DIFC are clearly or distinctly more appropriate fora for the Plaintiffs' claims than the Courts of the Cayman Islands."

52. At paragraph 35 of its written submission the Defendant repeats "that both the KSA and DIFC are fora available to the Plaintiffs in the current action" and then curiously adds "Largely, determination of the more appropriate of those two available fora will depend upon precisely how the Plaintiffs might choose to run their case." That is a rather nebulous and shaky foundation upon which to base a stay application. In effect the Defendant is saying: it is KSA or DIFC but that depends on the Plaintiffs.

53. Having spent paragraphs 37-39 presenting arguments based on the Shareholders Agreement at paragraph 40 the skeleton argument dated 5 September 2025 concludes:

> "Accordingly, the DIFC must be considered to be an available forum for the resolution of the Plaintiffs' claims"

and at paragraph 41 states:

> "Further or in the alternative, the Courts of the KSA are an available forum for the Plaintiffs' claim."

54. One can easily see why the Plaintiffs felt the Defendant had changed tact from KSA to DIFC. At paragraph 8 of its responsive submissions dated 17 September 2025 the Defendant nevertheless maintains that its earlier submissions were "clear that its arguments concerning the DIFC are an alternative …".

55. The Plaintiffs say that the Defendant's new primary case now is that the proceedings be stayed in favour of the DIFC (para 1b. (ii) of its skeleton argument) and that the KSA as an alternative forum is a "fall back" position (para 1b (iv) of its skeleton argument).

56. During his oral submissions Mr Wingrave indicated that the Defendant's primary case now is that KSA is the available forum but it, in the alternative, seeks to rely on the DIFC as also being an available forum.

57. On the new DIFC suggestion, the Defendant has provided the court with no expert evidence as to the law and practice of the DIFC and *a fortiori* the Plaintiffs have had no opportunity to put in any expert DIFC evidence in reply.

58. The Defendant now seeks to rely on DIFC being an alternative available forum by virtue of the Shareholders Agreement and an arbitration clause referring to an arbitration under DIFC/LCIA Rules in Dubai at the DIFC. The Defendant however is not a party to the arbitration agreement and the Defendant has in any event placed no expert evidence before this court on DIFC and Dubai arbitration, law and procedure. The burden is plainly on the Defendant to establish that there is an available alternative forum. In the circumstances of this case the alternative of DIFC/Dubai is something of a non-runner.

59. I turn now to the other forum suggested by the Defendant namely the KSA. I have considered the conflicting expert evidence in respect of that proposed alternative.

60. Dr Ibrahim Alhowaimil ("Dr Alhowaimil") was instructed on behalf of the Defendant and in his concise expert report dated 11 May 2025 (some 6 pages) states:

> "2 Expert Opinions
>
> 2.1 The opinions expressed in this report are based on my experience in Saudi laws and judicial procedures in Saudi Arabia.
>
> 2.2 I confirm that the Saudi's courts have jurisdiction to consider this case. The intentional (sic) jurisdiction of Saudi Courts refers to the legal authority of Saudi Arabian courts to hear and decide cases involving foreign parties.
>
> 2.3 The international jurisdiction of Saudi Arabian courts is primarily governed by the Law of Civil Procedure (Royal Decree No. M/1 dated November 25, 2013). In particular, Articles 25 and 26 of this law establish the bases upon which Saudi courts may assume jurisdiction in matters involving foreign parties or international disputes.
>
> The law of Commercial Courts in Saudi Arabia in Article 15 stated that: (Absent a specific provision in commercial laws or international treaties and conventions to which the Kingdom is party, the rules of international jurisdiction stipulated in the Low (sic) of Civil Procedure shall apply to cases that fall within the jurisdiction of the commercial court).
>
> 2.4 Law of Civil Procedure in Saudi Arabia clearly refers to jurisdiction of Saudi courts of such cases in Articles 25 and 26, Clarify the cases against a non-Saudis (sic).
> 1- the first type if the case was filed against non-Saudi defendant has a general or a designated place of residence, the Saudi courts shall have jurisdiction to hear the cases, except for cases related to real estate located outside Saudi Arabia.
>
> 2. The second type if the case was filed against non-Saudi who has no general or designated place of residence in Saudi Arabi, and the dispute relates to an obligation that originated in Saudi Arabia. The courts in Saudi Arabia have

> jurisdiction if the obligation forming the subject of the dispute was established, executed, or is to be executed within the Kingdom of Saudi Arabia
>
> So the law confirms that any obligation established in Saudi Arabia than (sic) the courts in Saudi Arabia have the jurisdiction the hear the case. The present case, the subject of the dispute involves obligation that originated in Saudi Arabia, therefore clearly falls within the jurisdictional scope of the Saudi courts.
>
> 2.5 there are laws in Saudi Arabia related to the subject of the dispute, and each of these laws addresses certain aspects of the dispute: the Companies Law, the Labour Law, the Commercial Courts Law, the Competition Law and the Law of Civil Transaction. In addition to the laws, Saudi courts rely on a numbers of judicial principles and precedents, which enhance the clarity and consistency of judgments issued in this area.
>
> 2.6 The conclusion of the opinion is that the Saudi courts shall have jurisdiction to consider the disputes between the parties and the lawsuit filed by the plaintiffs."

61. The Law of Civil Procedures is not attached to the report and neither is the "Law of Commercial Courts in Saudi Arabia" or Dr Alhowaimil's c.v.

62. Dr Adli A Hammad ("Dr Hammad"), was instructed on behalf of the Plaintiff, and produced a comprehensive report (some 24 pages) dated 11 June 2025. Dr Hammad helpfully attaches his impressive c.v. and also a copy of, amongst other material, the Law of Civil Procedures of the KSA First edition 2017 together with a translation for guidance.

63. Dr Hammad sets out the questions he has been asked to opine upon. The first question ("Question 1") is:

> "Would the Saudi courts assume jurisdiction to hear the claim against Ninja Holding [the Defendant in this case]? Please focus your analysis on the two principal sources of jurisdiction under Articles 25 and 26 of the Law of Civil Procedures … relied on in paragraph 2.4 of Dr Alhowaimil's Report".

64. Dr Hammad's clear and informed answer to Question 1 is as follows:

> "14.1 In response to Question 1, Saudi courts would not assume jurisdiction over the Plaintiffs' claim against Ninja Holding. Articles 24-26 of the Law of Civil Procedures [AH-1] define the circumstances in which the courts of Saudi Arabia will take jurisdiction over a case, particularly against a non-Saudi person (both juridical and natural). Article 24 is not applicable because Ninja Holding is not a Saudi entity. Article 25 is not applicable because it only applies to non-Saudi persons that maintain a residence in Saudi Arabia, which Ninja Holding does not. Contrary to Dr. Alhowaimil's Report, Article 26 is not applicable because the claims pleaded by the Plaintiffs, do not concern property in Saudi Arabia, do not concern obligations arising in Saudi Arabia, and do not concern obligations to be enforced in Saudi Arabia. Based on this, the courts of Saudi Arabia would not assume jurisdiction in this case."

65. Dr Hammad provides persuasive support for the clear and well expressed opinion in Section IV of his report from paragraphs 24-41 and concludes:

> "41. Accordingly, I am of the opinion that the Saudi courts would not have jurisdiction to hear the dispute in question."

66. Article 25 of the Law of Civil Procedures provides:

> "The Kingdom's courts shall have jurisdiction over cases filed against non-Saudis who have a general or designated place of residence in the Kingdom, except for cases in rem involving real property outside the Kingdom."

67. Noone has suggested that this case is a case "in rem involving real property outside the Kingdom."

68. I pause to record that I accept that Article 25 of the Law of Civil Procedures applies only to non-Saudi persons who maintain a general or designated place of residence in KSA. There is no evidence before the Court that the Defendant maintains such a residence. Indeed there is some evidence before the court which suggests the contrary.

69. Dr Abdulhadi (a director of the Defendant) at paragraph 6 of his first affidavit states that the Defendant (who he defines as Ninja Cayman) "never came to hold or operate any business or company in KSA." I think Dr Hammad goes too far when at paragraph 28 of his report he says that Dr Abdulhadi has confirmed in that paragraph that "the Defendant maintains no such place of residence in Saudi Arabia." Dr Abdulhadi does not say that at paragraph 6. There is however no evidence from the Defendant to the effect that it maintains a general or designated place of residence in KSA. The lack of such evidence is fatal to the Defendant's misplaced reliance on Article 25.

70. As regards the Defendant's reliance on Article 26 of the Law of Civil Procedures Dr Hammad at paragraph 29 refers to Dr Alhowaimil's reference "any obligations established in Saudi Arabia at paragraph 2.4 of his report." In fact the phrase used by Dr Alhowaimil is "any obligation established in Saudi Arabia" (singular not plural). Dr Hammad says that such does not provide an automatic basis for jurisdiction for the courts of Saudi Arabia.

71. Article 26 of the Law of Civil Procedures provides:

> "The Kingdom's courts shall have jurisdiction over cases field against non-Saudis who have no general or designated place of residence in the Kingdom in the following cases:
>
> a) if the lawsuit involves property located in the Kingdom or obligation considered to have originated or is enforceable in the Kingdom;
>
> b) if the lawsuit involves bankruptcy declared in the Kingdom; or
>
> c) if the lawsuit is filed against mor than one person and one of them has a place of residence in the Kingdom."

72. It is important to note the following provisions in the "Implementing Regulations of the Law of Civil Procedure" (the "Regulations") helpfully attached to Dr Hammad's expert report:

> "26.1 The Kingdom shall be deemed the place where the obligation originates <u>if such obligation is concluded therein</u>, whether it involves two or more natural or corporate parties, or whether it is made by a single party such as Juallah [a promise of payment for

> the performance of a certain task], or whether it is voluntary, such as a sale, or involuntary, such as compensation for damage.
>
> 26.2 The Kingdom shall be deemed the place where the obligation is enforced <u>if the contract provides for its full or partial enforcement therein</u>, even if such obligation originates outside the Kingdom." (emphasis added)

73. I accept that these are just examples of where the "deeming" provisions may be applicable and the main focus should be on the clear words of Article 26.

74. There is no evidence that any "obligation" was concluded in the KSA. There is no evidence that a contract provided for "its full or partial enforcement" in the KSA. Insofar as reliance is placed on the obligations in the Shareholders Agreement such agreement was governed by English law and clause 17.2 (b) referred to an arbitration (under the DIFC/LCIA Arbitration Rules" and the seat of any such arbitration was in Dubai, UAE (clause 17.2 (c). Furthermore the Plaintiffs' claims are plainly in tort, not in contract.

75. I have considered Dr Alhowaimil's responsive expert report dated 17 June 2025. I note the references to Articles 25 and 26 and Dr Alhowaimil's disagreement with Dr Hammad's interpretation of them.

76. At paragraph 13 on page 3 Dr Alhowaimil states:

> "Article 25 of the Law of Civil Procedure clearly provides that Saudi courts have jurisdiction if the defendant resides in the Kingdom, if the obligation in dispute arose or was performed in Saudi Arabia, or if the case relates to property located within the Kingdom."

77. It can be seen from a reading of Article 25 that it does not read as Dr Alhowaimil suggests it clearly does. Nowhere in Article 25 is there reference to the word "obligation" or the word "performed". Article 26 does refer to the word "obligation". The wording reads: "obligation considered to have originated or is enforceable in the Kingdom". There is no reference to the word "performed" in Article 26. Dr Alhowaimil says at paragraph 14: "… Where the text is clear, there is no room for interpretation". Dr Alhowaimil at paragraph 15 states "… Article 26 further expands the scope of

jurisdiction, granting Saudi courts the authority to hear cases even if the defendant is not a resident of the Kingdom, provided there is a substantial connection between the Kingdom and the subject matter of the dispute." Nowhere in the clear text of Article 26 do the words "substantial connection" appear. Neither did they appear in Dr Alhowaimil's first report dated 11 May 2025. No authority is cited in support of these words. No reasoning for their belated inclusion is apparent. It appears that faced with the compelling opinions of Dr Hammad, Dr Alhowaimil has simply plucked these words out of thin air in a rather desperate attempt to shore up the very shaky foundations of the opinions he expresses in his first report. It is difficult in such circumstances to attach any weight on Dr Alhowaimil's opinion on this point.

78. Lord Reed and Lord Hodge (with whom Baroness Hale, Lord Wilson and Lord Tomlinson agreed) in *Kennedy v Coria (Services) LLP* [2016] 1 WLR 597; [2016] UKSC 6 stated at [48]:

> "An expert must explain the basis of his or her evidence when it is not a personal observation or sensation; mere assertion or "bare ipse dixit" carries little weight … If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless …".

79. The Justices referred to a quote from Wessels JA in the Supreme Court of South Africa (Appellate Division): "Except possibly where it is not controverted, an expert's bold statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert."

80. The Justices also referred to a pithy quote from Lord Prosser:

> "As with judicial or other opinions, what carries weight is the reasoning, not the conclusion."

81. I note on page 16 Dr Alhowaimil's conclusion under paragraph 5 where he states: "I affirm the jurisdiction of the Saudi judiciary to hear the case". I note also that on pages 20-23 that Dr Alhowaimil sets out his c.v.

82. I have also considered the document entitled "Joint Expert Report" and dated 31 July 2025.

83. I note issue number 1 "Jurisdiction of the Saudi Courts (whether Saudi courts would assume jurisdiction over the dispute under Saudi Law of Civil Procedures Articles 25 & 26)."

84. I have noted the respective positions of the experts as set out on pages 2-5 of that document.

85. The positions of the respective experts are concisely set out and it is indicated that they are in disagreement. The following appears under the comments section:

> "The experts reach opposite conclusions on jurisdiction. Dr. Hammad stresses that none of the plaintiffs' claims satisfy the specific jurisdictional thresholds under Saudi law for cases against foreign defendants, while Dr. Alhowaimil asserts that the dispute does fall under Saudi courts' international jurisdiction because he characterizes at least one obligation, as having originated and to be performed in Saudi Arabia. Dr Alhowaimil has also raised a new argument that the Saudi courts have jurisdiction because there is a "substantial connection" between Saudi Arabia and the subject matter of the dispute. In Dr. Hammad's opinion there is no basis for this. The only cases in which the Saudi courts will have jurisdiction over non-Saudis is a case of this type are those set out in Articles 25 and 26 of the Law of Civil Procedure. Those provisions are exhaustive."

86. The conflict in the expert evidence on this point in this case is easy to resolve. I have no hesitation in preferring and accepting Dr Hammad's well-reasoned and supported opinion that the courts of the KSA "would not have jurisdiction to hear the dispute" (paragraph 41 of his report) over and above Dr Alhowaimil's opinion that "the Saudi Courts shall have jurisdiction to consider the disputes between the parties and the lawsuit filed by the plaintiffs" (paragraph 2.6 of his first report).

87. I reject Dr Alhowaimil's opinion on this jurisdictional issue as advanced in his reports and in the Joint Expert Report. I accept Dr Hammad's clear, compelling and well-reasoned expert opinion.

88. The Defendant relying on *Al-Aggad v Al-Aggad* [2024] 4 WLR 35 at [25] and [26] (Cockerill J) seems to suggest (see paragraph 18 of its written submissions) that if there is a conflict in the expert evidence "that the Court cannot resolve, principles of comity require the court to proceed on the assumption that the foreign forum is capable of delivering justice. In such circumstances, the forum should be treated as available". I agree with the Plaintiffs that such a suggestion is misguided (see

paragraph 16 of their skeleton argument). It wrongly conflates the question of *availability* of an alternative forum with the separate question of *access to justice* (which arises only if the alternative forum is clearly available and would otherwise be the most appropriate). In any event I have been able to resolve the conflict in the expert evidence on this jurisdictional availability point. I have accepted Dr Hammad's evidence and rejected Dr Alhowaimil's evidence on the point.

89. In my judgment the Defendant has failed to prove (and the burden is plainly upon it) that the KSA is an available alternative forum.

Summary

90. The burden is on the Defendant, on a balance of probabilities, to prove that KSA is an available alternative forum.

91. To discharge that burden it must satisfy the court that Article 25 and/or Article 26 are engaged.

92. Insofar as Article 25 is concerned the Defendant is a "non-Saudi" and to engage Article 25 has to prove to this court that it has "a general or a designated place of residence in the Kingdom." It has produced no evidence to that effect. Indeed the evidence it has filed suggests the contrary. At paragraph 6 of the first affidavit of Hani Al Abdullatif Abdulhadi sworn on 12 May 2025 it is stated that the Defendant "never came to hold or operate any business or company in KSA" and that it "does not currently trade or control any businesses at all". It does say that it "has provided loans to various companies in KSA …" but has declined to provide details and copies of the documentation evidencing the loans referred to in the affidavit. Faced with the distinct lack of evidence from the Defendant to prove that it has a general or designated place of residence in the KSA and faced with the Defendant's own evidence to the contrary the best Mr Wingrave could come up with was a few lines in the Riyad Capital Presentation on page 6 of the document "Ninja operates through an extensive network of 72 stores and 2 distribution centres in home market KSA to ensure competitive prices and reliable delivery services." The Defendant's case, insofar as I understand it at this stage, is that this is a case of mistaken identity and it is not the "Ninja" referred to in the Riyad Capital Presentation but Mr Wingrave nevertheless relies on such wording to seek to persuade the Court that the Defendant has a general or designated place of residence in the KSA. No evidence from the author(s) of the Riyad Capital Presentation has been placed before me. In his oral submissions, Mr Wingrave confirmed to the Court that "The Defendant is not saying that

it has a general or designated place of residence in the Kingdom". In such circumstances it is difficult to see how the Defendant can properly rely on Article 25. There is insufficient evidence before the court to conclude that the Defendant presently has a general or designated place of residence in the KSA so as to fall within Article 25.

93. The Defendant has failed to persuade this court that it has a "general or a designated place of residence in the KSA". Article 25 is not engaged.

94. Furthermore the Defendant has failed to persuade this court that "the lawsuit involves property located in the Kingdom or obligation considered to have originated or is enforceable in the Kingdom" and therefore Article 26 is not engaged. The obligations referred to in the Statement of Claim did not originate in and nor are they enforceable in the KSA. Mr Wingrave submitted that under Article 26 the claim need only "involve" a contract and Article 26 does not require the actual claim to be in contract. Mr Wingrave argued that the claim "involved" the Shareholders Agreement. Even leaving aside the issue as to whether "involves" which appears before the word "property" in Article 26 relates only to "property" or also includes "obligation" (Article 26) and "contract" (Regulation 26.2 of the Regulations), I again stress that the Defendant is not a party to the Shareholders Agreement and the obligation under that agreement did not originate in the KSA and nor is it enforceable in the KSA.

95. I note paragraph 26.1 of the Regulations. The "obligation" was not concluded in the KSA. I note also paragraph 26.2 of the Regulations. The claims in this case are not contractual, they are founded in tort. There is no contract that "provides for its full or partial enforcement" in the KSA. Mr Wingrave places great reliance on the Shareholders Agreement but the Defendant is not a party to it, it is governed by English law, and enforcement is by way of "arbitration under the DIFC/LCIA Arbitration Rules" and the arbitration is to take place in Dubai UAE. The rather strained arguments on the Shareholders Agreement do not assist the Defendant in respect of its primary case that the alternative available forum is the KSA.

96. In summary the Defendant has failed to satisfy this court that the KSA is an alternative available forum.

97. I considered whether the Defendant could properly rely on its fall back position that the DIFC is an alternative available forum. This belated suggestion (not reflected in the Summons or the first affidavit filed in support of it) was troublesome for a number of reasons. It arose by way of reliance

on an arbitration clause in an English law governed shareholders agreement to which the Defendant is not even a party (a fact Mr Abdulhadi acknowledges at paragraph 15 of his first affidavit). Furthermore, the Defendant has produced no expert evidence confirming that the DIFC would be an available forum in such circumstances. If the Defendant was to rely on the fresh point it should have applied for leave to file evidence and for the Plaintiffs to have an opportunity to file evidence in reply well before the hearing, or at least applied for an adjournment of the hearing to enable that to take place. It says it only had sight of the arbitration clause when the Plaintiffs filed their evidence. That evidence was sworn as long ago as 11 June 2025. There was no application to vary the directions for this hearing or for the hearing to be adjourned in order that this fresh DIFC point could be properly considered.

98. Based on the evidence presently before the court, I am not satisfied that it would be fair to permit the Defendant to take the DIFC point at this late stage and neither am I satisfied, based on the evidence before the court, that the DIFC is an available forum for the Plaintiffs to proceed against the Defendant, a Cayman company, in respect of its claims in these Cayman proceedings.

Conclusion

99. Taking into account all the evidence, submissions and relevant law in the case presently before me I think I can fairly state my conclusion concisely. The Defendant has not shown the court that there is another available court with competent jurisdiction.

100. I need say little more.

101. The Summons is dismissed for the reasons stated in this judgment.

Costs

102. Subject to consideration of any concise written submissions to the contrary I would be minded to order that the Defendant pay the Plaintiffs' costs to be taxed on the standard basis in default of agreement. If there are any concise (not exceeding 5 pages) submissions to the contrary they should be filed and served within 10 days with any concise (not exceeding 5 pages) written submissions in response to be filed and served within 7 days thereafter. I will then consider costs, if not agreed,

on the papers without the need for a further oral hearing. If costs are agreed then the attorneys should let my PA have a draft order reflecting the agreement.

Order

103. The attorneys should in any event, within 10 days from the delivery of this judgment, email my PA with a draft Order reflecting the fact that the Summons has been dismissed.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT