

Insights



Andrew Stafford KC Analyzes Implications of *Koza v Koza Altin Isletmeleri* on Cross-Border Arbitration Funding

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A recent judgment by the Court of Appeal of England and Wales has important implications for the court's intervention in international arbitrations and their treatment of arguments based on abuse of process and *Henderson v Henderson*. Kobre & Kim's Andrew Stafford KC wrote in an article first published by Lexis®PSL on August 4, 2020.

The case in question, *Koza v Koza Altin Isletmeleri*, concerned Koza Altin's injunction on Koza Ltd., preventing the latter from using its assets to help fund an investor-state arbitration. Among other issues, Koza Ltd. argued that Koza Altin could have applied for the stronger relief in two prior proceedings on the issue, meaning the current application was an abuse of process in violation of *Henderson v Henderson*. The Court of Appeal disagreed, concluding that just because Koza Altin could have done so does not mean they should have.

Stafford argues that this decision "reflects a willingness of the court to intervene in matters collateral to the arbitration itself," including upholding injunctive relief that could "arguably have the effect of financially preventing an arbitration claimant from the pursuit of its arbitration claim." Additionally, the decision is significant "because of its treatment of abuse of process, including of the rule in *Henderson v Henderson*," ruling the test is not merely if the applicant could have applied for wider relief earlier, but whether they should have done so.

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