THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

OLETA

Claimant/Respondent

and

ONESIMO

Defendant/Applicant

ORDER WITH REASONS OF H.E. JUSTICE ANDREW MORAN

UPON reviewing the Order of Small Claims Tribunal Judge Maitha Al Alshehhi dated 30 October 2024 (the "Order")

AND UPON reviewing the Judgment of H.E. Justice Maha Al Mheiri (the "Judge") dated 26 February 2025 (the "Judgment")

AND UPON reviewing the Defendant's Appeal Notice dated 12 March 2025 seeking permission to appeal the Judgment (the "Application")

AND UPON considering the documents and submissions filed by both parties and recorded on the case file

IT IS HEREBY ORDERED THAT:

1. The request for an oral hearing of the Application is refused.

2. The Application is refused.

3. The Applicant may not request that the decision be reconsidered at a hearing.

4. The Applicant shall bear its own costs of the Application.

Issued by:
Hayley Norton
SCT Judge and Assistant Registrar
Date of Issue: 25 April 2025
At: 2pm

SCHEDULE OF REASONS

1. By an Application Notice, including the required Application for Permission to Appeal, issued on 12 March 2025 (the "Application"), the Defendant Applicant and intending Appellant, Onesimo, seeks permission to appeal the Judgment of H.E. Justice Maha Al Mheiri sitting in the Small Claims Tribunal (the "SCT" or the "lower court"), of 26 February 2025.

2. The Judgment was made upholding certain claims advanced by Oleta (the "Claimant" in the lower court and the "Respondent" to the Application) made against the Applicant, for payment of her September salary, which the Judge held was due to her under a contract of employment dated 21 May 2024.

3. The Judgment upheld the Claimant's claim made against the Applicant for payment of the amount of AED 3,466.67 and the Court's fees in the sum of AED 367.25. The Judge also rejected the Applicant's defence of set-off in the amount of AED 10,000 in respect of alleged training costs allegedly payable to it by the Claimant.

4. By her Judgment, the learned Judge ordered as follows:

> "1. The Defendant's request for AED 10,000 in relation to training costs is denied.
>
> 2. The Defendant shall pay the Claimant the amount of AED 3,466.67 for her September Salary.
>
> 3. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.25.

5. In its Application, the Applicant had requested an oral hearing. Under the Rules of the Dubai International Financial Centre Courts 2014 (the "RDC"), it is provided as follows in relation to applications for permission of appeal being considered without a hearing

> **"Consideration of Permission without a Hearing 53.94 - 53.100**
>
> 53.94

Application for permission to appeal may be considered by the Court of First Instance without a hearing."

6. The Court thus has the power to decide an application for permission to appeal on the papers, without the need for an oral hearing. Having reviewed the materials presently before the Court, I am satisfied that the merits and prospects of success on appeal are so manifestly lacking that it would be inappropriate and not consistent with attainment of the overriding objective, to devote judicial resources to the holding of a hearing. I therefore determine this Application on the papers before me. The reasons why I have reached this conclusion are set out in the following paragraphs.

7. Under RDC 53.87, the "Court", meaning the Court to which an appeal is made, will allow an appeal where the decision of the lower court was:

"(1) wrong;

(2) unjust because of a serious procedural or other irregularity in the proceedings; or

(3) wrong in relation to any other matter provided for or under any law."

8. By RDC 53.89, an application for permission to appeal a decision of the SCT, must be made to the Court of First Instance in a particular form, and under RDC 53.91, permission to appeal may only be granted by me as a judge of the Court of First Instance:

"Where:

(1) the Court considers that the appeal would have a real prospect of success; or

(2) there is some other compelling reason why the appeal should be heard."

9. Application of that test, or satisfaction that its requirements have been met, obviously requires a prospective inquiry and assessment. In short, an applicant/intending appellant must show that there is a real (i.e. a realistic as opposed to a fanciful) prospect of persuading an Appeal Court, that the judge of first instance, in the Small Claims Tribunal was wrong in what she decided. This requirement must be satisfied by the grounds of appeal advanced, and the written submissions made showing that the Judge erred in her findings and decision.

10. In this case, there is simply no prospect in my judgment of this Applicant showing on an appeal, that the Judge was wrong in what she decided on the issue of reimbursement of training costs; or made her decision in a manner that was unjust.

11. The Judge was entitled to interpret Article 4 Clause 2 in the employment contract in the manner that she did, as only applying so as to entitle the employer to recover training expenses actually incurred and charged to the company for training services provided to the employee, by an external provider. Further, she was entitled to conclude that any cost of basic internal training delivered by fellow employees "on the job" so to speak, was not within the parties' objectively ascertained intentions for reimbursement of training costs expressed in that clause.

12. Furthermore, she was entitled to conclude on the evidence before her, that the Defendant Applicant had not proved that it had incurred such recoverable expenses or that any training went beyond the essential and ordinary internal training provided by any employer to understand the requirements of the employment and perform the job.

13. In the Notice of Appeal, the Defendant Applicant now raises additional claims against the Claimant for: (i) failure to fulfil the three-month notice period as per her employment contract and (ii) visa cost recovery as per article 57(2) and article 63 of DIFC Employment Law. Those grounds of appeal have not been the subject of any claim or counterclaim by it and were not before the Judge for her determination. It is not permissible to raise these new counterclaims on an application for permission to appeal. The Applicant also adverts to the existence of evidence of costs incurred from an external training provider, which it says it is willing to produce; but even now has not produced. Such evidence, even if it were available, ought to have been produced for the hearing before the Judge and no reason is advanced why it could not have been produced. It is not even produced and appended to the Notice of Appeal at this late stage. There is no prospect that the Applicant would be allowed to rely on such fresh evidence, not produced before the SCT, on the hearing of an appeal.

14. In those circumstances, there is no realistic prospect of the Applicant succeeding on appeal against the Judge's decision that it is not entitled to set-off the alleged training costs it claimed it had incurred in relation to the Claimant, against the final salary payment which the Judge ordered it to pay to the Claimant. Permission to appeal is therefore refused. The Court is also satisfied that the Application is in fact and law, totally without merit within the meaning, and for the purposes of RDC 53.99. That rule empowers the Court to order that the Applicant may not request that this decision to refuse permission to appeal, be reconsidered at a hearing. Accordingly, the Court has made an order to that effect.

15. This Court also notes the Claimant's contention before the Court, that the Applicant is in breach of the order by consent of SCT Judge Maitha Alshehhi, of 30 October 2024, (the "Order") that the Defendant shall proceed to cancel the Claimant's employment visa. If the Applicant remains in breach of that Order, which is an unconditional mandatory Order of the SCT, its breach should be drawn to the attention of Judge Maitha Alshehhi so she may decide what, if any, action should be taken of the SCT's own motion, to enforce the Order.