Claim No: CFI 011/2013

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE

ON APPEAL FROM THE SMALL CLAIMS TRIBUNAL

BEFORE JUSTICE SIR DAVID STEEL

Between

MONA SINAKI	Appellant
and**OPENLINK INTERNATIONAL**	Respondent

Hearing: **29 August 2013**
Counsel: Mona Sinaki Appellant in personRobert Karrar-Lewsley (Al Tamimi & Co LLP) for the Respondent
Judgment: **19 September 2013**

JUDGMENT OF JUSTICE SIR DAVID STEEL

Transcribed from the Oral Judgment delivered on 29 August 2013 and revised and approved by the Judge

1. This is an appeal by the Claimant, who had filed a claim for the sum of AED 373,000 before the DIFC Courts' Small Claims Tribunal. The claim was based upon a complaint that she had been dismissed by her employer and that she was entitled to monies under the terms of her contract of employment and also to damages because the dismissal was in some respects wrongful.

2. The claim had been issued in May 2013 and, following a preliminary hearing sometime later that month, the matter came before Judge Shamlan Al Sawalehi in June 2013 and he issued his judgment very promptly on 11 June. In that judgment, he dismissed all the Appellant's claims.

3. On 24 June, the Appellant filed an application for permission to appeal and she was given leave to appeal by H.E. Justice Omar Al Muhairi to appeal to this Court. In support of her appeal, the Appellant prepared an Appellant's Notice which sets out the grounds of her appeal under six paragraphs, supported, shortly thereafter, by a Skeleton Argument.

4. I have had the benefit of a Skeleton Argument furnished by the Respondent's Solicitors, drafted by Mr Samir Kantaria and I have also received and taken notice of a further Skeleton Argument provided by the Appellant in a document dated only two days ago.

5. Ms Sinaki has appeared in person and has put forward her complaints in a personable and coherent fashion and I am grateful to her. I have had the advantage of counsel for Al Tamimi & Company, Robert Karrar-Lewsley, who has appeared for the Respondent and I am grateful to him since he has borne well in mind his obligations in regard to dealing with a litigant in person and assisting the Court in respect of matters which are controversial.

6. The claim, in fact, was in excess of the Small Claims Tribunal jurisdiction provided in rule 53.2 of the Rules of the DIFC Courts (RDC) but the parties agreed that, nonetheless, the matter should be dealt with by the Small Claims Tribunal. That brings with it various factors, not least a limitation on the cost of the proceedings but, perhaps more importantly, it brings in its train the rule that the parties should not be legally represented at the hearing and the hearing itself, when one has regard to rule 53.42, 53.43 and following, is relatively informal. It is in private. The strict rules of evidence do not apply. The Judge is in a position to participate in cross-examination and the asking of questions.

7. The Judge's Judgment runs to 25 paragraphs. It identifies with precision the nature of the issues between the parties, the background and sets out in some detail the grounds for concluding that the claim should be dismissed. In doing so, the judge refers to various documents and also to various aspects of DIFC law. There are quotations from statements that were furnished to the Tribunal by Ms June Thorpe, who was, as I understand it, the primary figure in the Human Relations Department of the Respondent's company, Mr Saqib Mahmood, who was the immediate superior to the claimant during the course of her employment and against whom various complaints of harassment were made by Ms Sinaki and also, of course, a statement from the Claimant herself.

8. The appeal, since it is an appeal from the Tribunal, itself has limited scope and, in particular, attention must be drawn to rule 44.144, which reads as follows:

> "The Court of First Instance will allow an appeal from a decision of the tribunal where the decision was (1) wrong in relation to a question of law; (2) unjust because of procedural unfairness or miscarriage of justice and/or (3) wrong in relation to any other matter provided for in or under the DIFC law."

9. So two points need to be made. First that a complaint about a finding of fact by the lower court is not just justiciable on an appeal unless it flows from some procedural unfairness or miscarriage of justice. The only justified complaint in respect of a decision against which an appeal is brought from the decision of the Tribunal is that it was either procedurally unfair or gave rise to an error of law. All questions of fact are entirely for the Tribunal.

10. The second point that needs to be made in relation to any appeal is that it is limited by virtue of rule 44.136 to a review of the decision of the lower court. It is not a rehearing. It follows that the Appellant must identify matters within the judgment, which justify or arguably justify a complaint that the judge was wrong in law or was conducting proceedings in a manner which gave rise to unfairness or a potential miscarriage of justice. That is an important observation in the context of this case, because the Appellant has made wide ranging challenges to the findings of the judge and, indeed, goes so far as to say that the entirety of his judgment is wrong. Whilst it may be legitimate to complain that the conclusion is wrong, it is of no assistance to the Court to simply challenge the entirety of the judgment without identifying what the specific and individual complaints are. It is only then that the Court can identify the merits of the various complaints and also whether they are within the scope of the rules relating to an appeal.

11. With that introduction, I turn to the various points which are raised in the Notice of Appeal as developed in the Skeletons and helpfully further developed by Ms Sinaki in the course of her oral submissions. The first complaint is that the employment contract upon which the judge appeared to have relied was not a contract which had been executed by the Claimant. Indeed, Ms Sinaki goes so far as to say that her apparent signature on that document was forged.

12. As I understand it, the sequence of events was as follows. During the course of the hearing, the copy of her Employment Contract put before the Court, whilst it did have a signature of a representative of the Respondent, did not have a signature of the Appellant. The Judge asked the parties to produce a signed version to be sent to him following the hearing and, indeed, such a document was sent by the Claimant to the Court and, no doubt, furnished to the Judge. It may well be that no copy was directly sent, either by the Court or by the Respondent, to the Appellant.

13. It would appear that the Appellant asked for a copy of the document immediately after the Judgment was handed down but, as I understand it, was too upset at the outcome to be in a position to study it but eventually, did study it with some care. Rather surprisingly, this occurred she said on about 16 July, which is after the Appellant's Notice of Appeal had been filed. When she studied it, she concluded that the signature on the document was certainly not hers.

14. There were various difficulties about this. The Judge in terms has found that it was a duly executed Employment Contract. He says that between paragraphs 8 and 11 of his Judgment and he also concludes that it was a contract affirmed by conduct between the Appellant and the Respondent. He had seen the document that had been produced. He was not aware of any complaint that the signature had been forged. Indeed, it is difficult to see what motive the Respondent would have had for forging Ms Sinaki's signature. If anything an unsigned document would undermine Ms Sinaki's case. In any event It was perfectly open to the Judge to conclude that, whether or not there was a contract signed by both parties, each party was operating under the terms of that contract even if it was not signed and that is the conclusion of fact that he has reached. I have seen no material and heard no argument which undermines that finding of fact which as I have indicated is unchallengeable save in very limited circumstances.

15. In any event, no material is adduced before me for me to make good the allegation that the signature that appears on the document, which Ms Sinaki accepts looks like her signature, is not her signature. The assertion which I suppose was implicitly made was that the delivery of the document after the hearing without delivering a copy to the Claimant had been unfair in some way or may otherwise have given rise to a miscarriage of justice. I have borne that well in mind but, as I say, I am not remotely satisfied that there is any basis for saying that the parties were, in fact, proceeding under the terms of some quite different contract. I am also wholly unsatisfied that the complaint that the document contains a forged signature is even arguably made out and accordingly I dismiss that first ground of appeal.

16. The second complaint is an insignificant one, namely, that the Judge made an error in identifying the signature for the Respondent on the

document. He records, in paragraph 9, that the document was signed by June Thorpe as Chief Operating Officer. That appears to be wrong; it was signed by somebody else: Mr Massar. I do not regard that error to be of any significance, save, as Ms Sinaki says, that it perhaps attracts the need for caution when studying the detail of the Judgment. Again, so far as it constitutes a ground of appeal, I dismiss it.



17. The third ground of appeal is, at least as expressed in the Notice of Appeal, that the Appellant had made a complaint to the police to the effect that she was being sexually harassed by Mr Mahmood Saqib and that this had led to the termination of her employment as a retaliation for making that complaint and that the Judge had failed to make a finding in that respect. Again, this is a complaint in relation to a finding or lack of finding of fact and for that reason it can be disregarded. But in fact Ms Sinaki disclaims any reliance upon this point, which is not too surprising since the suggestion that she was terminated in retaliation for reporting the matter to the police is completely misconceived because she complained to the police after her employment had been terminated. So the contention raised in the Notice of Appeal must be dismissed.



18. She put the point slightly differently in the course of her submissions and, effectively, made the point that the Judge had failed to place sufficient weight on the complaints of harassment. In particular she contended that the Judge had failed to analyse in an appropriate and convincing fashion the evidence in relation to the questions of harassment, which are to be found in paragraphs 12 through 23 of the judgment and which quote at some length from the statements of Ms Thorpe, Mr Saqib Mahmood and the complaints that have been made by the Appellant.



19. This, once again, if it is to be allowed as a ground of appeal at all, is a complaint relating to an issue of fact. When one reads the Judgment of the Judge, his analysis of the material put before him is clearly open to him. It may be that another Judge might have formed a different view of the material but that, of itself, is not enough. Any complaint of fact, even if it is allowable as grounds of appeal, can only be made good on the grounds that the Judge could not properly and fairly reach the conclusion he reached at all. Consequently, paragraph 3 of the points of the notice of appeal, is also dismissed.



20. The next complaint is that the Judge, having cited Article 50 of DIFC Law No. 10 2004, then identified that there were lacunae in the relevant law in relation to questions of unfair dismissal. It followed, so the argument ran, that the gaps should be filled by the application of the law of the Courts of England and Wales. I dismiss that complaint outright. There is absolutely no basis for transposing into the DIFC Law provisions in English law relating to harassment and termination of a contract. The point is simply not arguable and, again, paragraph 5 must be dismissed.



21. The last point at paragraph 7 is accepted to be ancillary. It is a complaint that in some respect the Respondent's law firm had harassed the Appellant in order to pressure her to sign some agreement. No agreement or document was ever, in fact, executed and the activities of the law firm instructed by the Respondent had no significance whatsoever with regard to the outcome of this hearing. So that application must be dismissed as well.



22. Broadly speaking, Ms Sinaki is unhappy with the outcome of the Judgment. She regards it as unfair. She complains that the proceedings were unduly, I think, informal despite her agreement to proceed under the Tribunal Rules. She even goes so far in her additional material to make a complaint that in some way the Judge was biased against her. I would like to make it absolutely plain that my reading of this Judgment demonstrates quite to the contrary, that the Judge has considered this case with conspicuous skill and care, without any foregone conclusion or bias. It is a well-reasoned and well written Judgment and this application by way of an appeal against that Judgment must be dismissed.

Issued by:

Natasha Bakirci

Assistant Registrar

Date: 19 September 2013

Time: 4pm