THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

N/A

BETWEEN

PERMELIA

Claimant/Respondent

and

PRAIRIE

Defendant/Appellant

ORDER WITH REASONS OF H.E. JUSTICE RENE LE MIERE

UPON the Judgment of SCT Judge Maitha Al Shehhi dated 4 September 2026 (the "Judgment)

AND UPON the Defendant's Appeal Notice dated 7 September 2026 seeking permission to appeal the Judgment (the "Application for Permission to Appeal")

AND UPON considering the documents on the case file

AND PURSUANT TO the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Application for Permission to Appeal is dismissed.

2. There shall be no order as to costs.

Issued by:
Hayley Norton
SCT Judge and Assistant Registrar
Date of Issue: 12 October 2026
At: 8am

SCHEDULE OF REASONS

A. Introduction

1. The Defendant seeks permission to appeal the judgment of the Small Claims Tribunal ("Tribunal") dated 4 September 2026. The Tribunal allowed the Claimant's employment claim in part and dismissed the Defendant's counterclaim. The Claimant opposes the application.

2. The proposed appeal is limited to the dismissal of the Defendant's counterclaim for compensation arising from the Claimant's failure to serve the balance of the contractual three-month notice period. The Defendant accepts the material findings of fact and does not challenge the Tribunal's determinations on training costs, salary deductions, vacation leave, commission, or the Claimant's claim for payment in lieu of notice.

3. The Defendant contends that the Tribunal failed adequately to consider the compensatory consequences of the Claimant's established and unexcused breach of the contractual notice obligation within the broader DIFC contractual and remedial framework. The Claimant responds that the Tribunal expressly recognised the availability of damages but dismissed the counterclaim because the Defendant had not established the financial loss caused by the breach.

4. For the reasons which follow, I am not satisfied that the proposed appeal has a real prospect of success, nor that there is any other compelling reason for it to be heard. Permission to appeal is therefore refused.

B. Relevant background and the Tribunal's decision

5. The Claimant commenced employment with the Defendant on 2 September 2025 under a two-year employment agreement with a monthly salary of AED 5,500. Clause 2 of the agreement required either party seeking to terminate the employment during the term to give three months' prior notice and provided that the notice period should be the same for both parties.

6. On 16 January 2026, the Claimant resigned and confirmed she would serve the contractual notice period. The Defendant accepted her resignation that day. The Claimant's last working day was 2 February 2026. On 3 February 2026, she notified the Defendant that she was terminating her employment with immediate effect, relying on conduct she characterised as constructive dismissal.

7. The Tribunal considered whether the matters relied upon by the Claimant entitled her to terminate immediately for cause under Article 63 of the DIFC Employment Law. It found that her reassignment to outbound-call duties remained within the ordinary scope of her role and that she had

access to the workplace and facilities necessary to perform those duties. After considering the matters both individually and cumulatively, the Tribunal concluded that the statutory threshold for termination for cause was not met.

8. The Tribunal accordingly found that, in the absence of a valid termination for cause, the Claimant remained contractually obliged to serve the agreed notice period. It nevertheless dismissed both the Claimant's claim for wages in lieu of notice and the Defendant's counterclaim for AED 16,500, calculated as three months' salary.

9. In addressing the Defendant's counterclaim, the Tribunal distinguished an automatic entitlement to a stipulated payment from a claim for damages for breach. At paragraph 65, it held that neither the agreement nor Article 62 rendered the Claimant automatically liable to the Defendant for an amount equal to her wages for the unserved notice period. The agreement contained no liquidated-damages or payment- in-lieu provision imposing that liability.

10. At paragraph 66, the Tribunal expressly recognised that failing to serve the agreed notice period could constitute a breach capable of giving rise to damages where loss was established. It found, however, that the Defendant had claimed AED 16,500 solely based on three months' salary and had not produced evidence of corresponding financial loss arising from the unserved period. On that basis, it dismissed the notice- period counterclaim.

C. The proposed grounds and the Claimant's opposition

11. The Defendant advances three principal grounds. First, it contends that the Tribunal failed adequately to address the legal consequences of the Claimant's established and unexcused breach of the reciprocal contractual notice obligation. The Defendant accepts that the absence of a payment-in-lieu or liquidated-damages provision meant that AED 16,500 did not automatically become payable as a contractual debt. It submits, however, that this did not exclude a separate right to compensation for breach.

12. Secondly, the Defendant contends that the Tribunal failed adequately to consider the wider DIFC contractual and remedial framework. It relies on *Musaab Tag Elsir Abdelsalam v Expresso Telecom Group* [2021] DIFC CA 011 and *Faizal Babu Moorkath v Expresso Telecom Group Ltd* [2023] DIFC CFI 008 to support the propositions that general contractual remedies may operate alongside the Employment Law and that breach of a primary contractual obligation may give rise to a secondary obligation to compensate for the resulting loss.

13. Thirdly, the Defendant submits that differing approaches in the existing DIFC authorities warrant appellate clarification. It contends that the proposed appeal raises a recurring question about the consequences of an employee's failure to serve contractual notice, thereby presenting a compelling reason for the appeal to be heard.

14. The Defendant no longer seeks payment calculated on the full three-month notice period. It seeks compensation of up to AED 13,200 for the actual unserved balance, or such lesser amount as the Court determines. Alternatively, it seeks remittal to the Tribunal for assessment of ordinary net contractual loss, accepting that remuneration and other costs avoided by the Claimant's cessation of work must be taken into account.

15. The Claimant submits that the proposed appeal mischaracterises the Tribunal's reasoning. She relies on paragraph 66 of the judgment, which expressly recognised that failure to serve notice could give rise to damages where loss was established. Her position is that the counterclaim failed not because a compensatory remedy was unavailable, but because the Defendant failed to demonstrate the financial loss caused by the unserved notice period.

16. The Claimant further submits that the authorities relied upon do not dispense with the requirement to prove loss. She contends that reducing the salary-based calculation does not establish the Defendant's net loss and that remittal would afford the Defendant another opportunity to remedy the failure of proof in its original case. She accordingly submits that neither a real prospect of success nor any other compelling reason for hearing the appeal has been established.

D. Applicable principles

17. RDC 53.91 governs the application. Permission to appeal may be granted only if the Court considers that the proposed appeal has a real prospect of success or that there is some other compelling reason for the appeal to be heard. These are alternative grounds: satisfaction of either may justify permission.

18. The permission inquiry is separate from the determination of the appeal. The Defendant need not establish at this stage that the appeal will succeed. It must, however, demonstrate a real prospect of obtaining appellate relief, or identify another compelling reason for the appeal to proceed.

19. Under RDC 53.87, the Court will allow an appeal where the decision was wrong, unjust because of a serious procedural or other irregularity in the proceedings, or wrong in relation to any other matter provided for or under any law. The Defendant's proposed appeal alleges errors of law. It does not challenge the material findings of fact or allege a serious procedural irregularity.

20. The application must therefore be assessed by reference to the Tribunal's reasoning, read as a whole, and to the grounds advanced. The question is whether those grounds disclose a real prospect of demonstrating a material error that warrants interference with the dismissal of the notice-period counterclaim, or, alternatively, some other compelling reason for the appeal to be heard.

E. Whether the appeal has a real prospect of success

<u>E1. The alleged exclusion of a compensatory remedy</u>

21. The Defendant's principal contention is that the absence of an express payment-in- lieu or liquidated-damages provision does not preclude compensation for an established and unexcused breach of the contractual notice obligation. However, that contention does not identify any error in the Tribunal's reasoning. It proceeds on a reading of paragraph 65 that does not take account of paragraph 66.

22. At paragraph 65, the Tribunal rejected the notion of automatic liability to pay an amount equivalent to the Claimant's wages for the unserved notice period. At paragraph 66, it expressly recognised the separate possibility of recovering damages for breach where loss was established. The Tribunal therefore distinguished between a contractual debt, which arises without proof of loss, and a compensatory remedy, which depends on proof of loss.

23. The Defendant accepts that the amount claimed did not automatically become payable as a contractual debt. The Defendant's submission that a breach may nevertheless give rise to damages is consistent with the Tribunal's reasoning. The counterclaim was dismissed not because damages were legally unavailable, but because the Defendant had not demonstrated any corresponding financial loss arising from the unserved notice period.

24. The finding that the Claimant remained obliged to serve notice does not answer the separate question. An established breach and entitlement to the compensation claimed are distinct matters. The Defendant's reliance on the former does not demonstrate a real prospect of overturning the Tribunal's conclusion on the latter.

E2. The wider contractual and remedial framework

25. The Defendant relies on *Musaab Tag Elsir Abdelsalam v Expresso Telecom Group* [2021] DIFC CA 011 for the general application of contract law and the Law of Damages and Remedies alongside employment law. It also relies on *Faizal Babu Moorkath v Expresso Telecom Group Ltd* [2023] DIFC CFI 008 for the distinction between a primary contractual obligation and a secondary obligation to compensate for loss caused by its breach.

26. Those propositions do not undermine the Tribunal's decision. Even if the general contractual and remedial provisions apply to the Claimant's breach, they do not establish that the Defendant is entitled to compensation measured by the Claimant's wages without showing the loss caused by the breach.

27. Article 109 of the Contract Law recognises a right to damages for unexcused non- performance. That provision must be read with Articles 110-112. Those Articles provide for compensation for harm resulting from non-performance, require avoided costs to be taken into account, and require that harm be established with a reasonable degree of certainty. Articles 8-11 of the Law of Damages and Remedies contain corresponding provisions.

28. The distinction between a primary obligation and a secondary compensatory obligation does not remove those requirements. Nor does the reciprocal nature of the notice obligation establish that the financial consequences of its breach must be identical for employer and employee. The Defendant must establish its own compensable loss under the applicable remedial provisions.

29. The Tribunal's recognition that a breach could give rise to damages, followed by its consideration of whether the corresponding financial loss had been demonstrated, was consistent with that framework. The Defendant has not shown a real prospect of establishing that the Tribunal's failure to expressly discuss each of the provisions or authorities relied upon resulted in a material error.

E3. The revised salary-equivalent claim

30. The Defendant now seeks compensation only for the unserved balance of the notice period, up to AED 13,200. That revision addresses the inclusion in the original claim of notice which the Claimant had already served. It does not address the separate deficiency the Tribunal identified.

31. The Claimant's wages are the remuneration payable for her services. Without more, they do not establish the Defendant's loss arising from being deprived of those services. Under the ordinary compensatory measure, the value of the lost performance and any consequential loss must be assessed together with the remuneration and other avoided costs. The Defendant expressly accepts that avoided costs must be taken into account if ordinary net contractual damages are the appropriate measure.

32. The Defendant has not identified a contractual provision or an applicable statutory rule that entitles it to notice-equivalent compensation without proof of loss. The reciprocal obligation to give notice does not, by itself, establish such a measure of recovery.

33. Merely reducing the salary-based calculation to reflect the unserved period therefore does not demonstrate a real prospect of establishing that the Tribunal was wrong to dismiss the counterclaim for want of proven loss.

E4. Uncertainty of quantum and remittal

34. The Defendant alternatively seeks remittal to the Tribunal to assess ordinary net contractual loss. It relies on the distinction between establishing the existence of loss and establishing its precise amount.

35. That distinction is recognised in Article 112 of the Contract Law and Article 11 of the Law of Damages and Remedies. Where harm is established with reasonable certainty, but its amount cannot be established with sufficient certainty, the Court may, in its discretion, assess damages. The power to assess an uncertain amount does not dispense with the requirement to establish the underlying harm.

36. The Tribunal concluded that the Defendant failed to establish compensable loss, not merely uncertainty about the amount of an established loss. It found that the Defendant had not produced evidence demonstrating a corresponding financial loss caused by the unserved notice period. The proposed appeal accepts the material factual findings and does not identify any evidence establishing loss that the Tribunal failed to consider.

37. Remittal would therefore not follow merely from confirming the availability of a damages remedy that the Tribunal already recognised. The Defendant has not identified a material error of law that would require a fresh assessment of quantum. On the grounds advanced, the proposed appeal has no real prospect of success.

F. Whether there is another compelling reason

38. The Defendant alternatively submits that the existing DIFC authorities present differing approaches to an employee's failure to serve contractual

notice, and that appellate clarification is required. This contention must be considered separately from whether the proposed appeal has a real prospect of success.

39. The Defendant relies particularly on *Jamaru Group Holding Ltd v Jasmine* [2019] DIFC SCT 116, where an employee who failed to serve one month's contractual notice was ordered to pay an amount equivalent to one month's salary. The decision was made under the former Employment Law and offers limited reasoning for the salary- equivalent award. It does not establish a general entitlement to such compensation under the statutory framework applicable to the present dispute.

40. The Defendant also refers to Larti v Lotsu [2022] DIFC SCT 225, *Lexi v Lacey LLC* [2020] DIFC SCT 291 and *Murkan v Mishti* [2023] DIFC SCT 089. As the Defendant's submissions acknowledge, *Larti* concerned a failure to establish harm, while *Lexi* concerned a unilateral deduction rather than an independently determined damages claim. In *Murkan*, the notice-period counterclaim turned on the finding that the employee was willing to serve the remaining notice, but the employer refused that offer. The separate economic-loss claim failed for want of proof. Those circumstances differ from the present case, but the Defendant's distinction that breach is established here does not answer the independent requirement to establish compensable loss.

41. In particular, the Defendant's assertion that the Claimant's unexcused failure to serve notice is established here does not address the separate requirement to demonstrate compensable loss. The Tribunal accepted that the contractual obligation remained binding and that its breach could give rise to damages. The counterclaim failed at the subsequent stage of establishing the loss caused by that breach.

42. The proposed appeal therefore does not require the determination of an unresolved question about whether an employer may recover damages for an employee's breach of a contractual notice obligation. The Tribunal expressly recognised that possibility. Nor has the Defendant identified a sufficient basis for treating the Claimant's wages for the unserved period as the appropriate measure of the Defendant's loss, irrespective of ordinary compensatory requirements.

43. I accept that questions about contractual notice obligations may recur in employment disputes. However, their potential recurrence does not provide a compelling reason to hear this appeal, given that the general availability of a damages remedy was recognised and the counterclaim was dismissed for failure to establish loss. Clarification of the abstract proposition advanced by the Defendant would not address that independent basis for dismissal.

44. Accordingly, I am not satisfied that the asserted differences in the authorities, or the wider significance attributed to the notice obligation, constitute a compelling reason for this appeal to be heard.

G. Conclusion

45. For the reasons given, the proposed appeal has no real prospect of success, and no other compelling reason has been shown for it to be heard. The Defendant has not identified a material error in the Tribunal's dismissal of the notice-period counterclaim for failure to establish compensable loss. Accordingly, the application for permission to appeal is refused.

H. Order and Costs

46. The Defendant's application for permission to appeal is refused. The Tribunal's judgment remains undisturbed.

47. The Defendant seeks its costs of the appeal. The Court refuses that request because the Defendant's application for permission to appeal was unsuccessful. The Claimant has not sought costs of the application.

48. The Court makes no order as to costs.