THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

WISSAM RIFAI SARRAJ

Claimant

and

NAY LEBANESE RESTAURANT AND LOUNGE

Defendant

ORDER OF H.E. JUSTICE OMAR AL MUHAIRI

UPON reviewing the Claimant's Application Notice CFI 023-2015/1 dated 15 November 2015 seeking a court order to reopen the appeal decision of H.E. Justice Ali Al Madhani dated 2 September 2015 ("the Application");

AND UPON reading the relevant material in the case file;

IT IS HEREBY ORDERED THAT:

1. The Claimant's application to reopen the appeal decision of H.E. Justice Ali Al Madhani dated 2 September 2015 is denied.
2. There be no order as to costs.

Reasons

1. The Claimant filed a claim in the Small Claims Tribunal of the DIFC Courts for his employment entitlements on 4 May 2015. On 22 June 2015 the Registry issued a Judgment by H.E. Shamlan Al Sawalehi amended on 1 July 2015, in which the Claimant was awarded AED 7,692.
2. On 16 July 2015, the Claimant filed an appeal in the Court of First Instance. On 2 September 2015, a decision by H.E. Justice Ali Al Madhani was issued dismissing the appeal filed by the Claimant.
3. On 15 November 2015, the Claimant filed an application to reopen the decision of H.E. Justice Ali Al Madhani pursuant to Rule 44.179 of the Rules of the DIFC Courts ("RDC") on the grounds that: i) it is necessary to do so to avoid real injustice; ii) the circumstances are exceptional; iii) there is no alternative remedy.
4. The Claimant's arguments and requests were similar to the arguments and requests made before the Small Claim Tribunal and the Court of First Instance (the appeal court at this stage). The Claimant failed to provide any new grounds or evidence to support the Application to reopen the decision of Ali Al Madhani dated 2 September 2015.
5. The Claimant's arguments were previously argued and rejected in the Small Claims Tribunal and the Court of First Instance pursuant to Article 19(5) of the DIFC Courts Law No. 10 of 2004 which states that, "unless DIFC Law specifically provides to the contrary, no appeal shall lie from a decision of the Court of First Instance in relation to an appeal from a tribunal". Accordingly, Article 1 of Rule 44.179 of the RDC cannot be applied in this case.
6. Furthermore, Article 2 of Rule 44.179 of the RDC cannot be applied as the Claimant failed to provide any new documents or evidence in relation to the application and all the evidence provided was previously argued and rejected in the SCT and CFI.
7. In addition, the Claimant failed to prove that there is no alternative remedy as per Article 3 of Rule 44.179 of the RDC in order to request to reopen the appeal order.
8. For the reasons mentioned above, I am satisfied that the arguments raised by the Claimant were already dealt with at the SCT and CFI

Courts and that the Defendant failed to establish new grounds or evidence to reopen the appeal. Therefore, I have refused the Claimant's Application to reopen the appeal decision of H.E. Justice Ali Al Madhani.

Issued by:

Nassir Al Nasser

Judicial Officer

Date of issue: 22 December 2015

At: 4pm