Claim No. SCT 226/2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum,

Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

IZRAM

Claimant

and

IVAAH LIMITED

Defendant

Hearing: **8 July 2018**

Further submissions: **23 July 2018**

Judgment: **29 July 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim having been called on 20 and 26 June 2018 for a Consultation before SCT Judge Ayesha Bin Kalban;

AND UPON the parties not having reached settlement;

AND UPON a Hearing having been held before me on 8 July 2018, with the Claimant and the Defendant's representative attending in person;

AND UPON reading the documents submitted in the Court file and hearing the parties' arguments at the Hearing;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant AED 10,166.6 as to the 7-day notice period, unpaid annual leave and the outstanding Claims.

2. The Claimant's remaining claims are all dismissed.

3. The Defendant shall pay the DIFC Courts the remaining amount of the DIFC Courts' Filing Fee in the amount of AED 1,506.5.

4. The Defendant shall pay the Claimant AED 49,995 as a penalty pursuant to Article 18(2) of DIFC Employment Law and an additional AED 666.6 per day from the date of this Judgment, until payment is made.

Issued by:

Maha AlMehairi

SCT Judge

Date of issue: 29 July 2018

At: 3pm

THE REASONS

Parties

1. The Claimant, Izram, is a Pakistani national allegedly employed by the Defendant company.

2. The Defendant, Ivaah Limited, is a financial services group, that offer Investment Banking, Private Wealth Management and Corporate Advisory services to clients operating in the DIFC.

Background

3. The Claimant and the Defendant entered into an Employment Contract on 4 January 2018 which listed the Claimant's employment as commencing on that same day ("Employment Contract"). The Claimant's Employment Contract listed him in the position of "Senior Manager - Private Wealth Management Division" for a monthly salary of AED 20,000 and provided for a six-month probation period from the date of joining.

4. On 1 January 2018, the Claimant opened a file with the Bur Dubai Police station for the loss of his original passport, an issue that delayed the visa process with his new employer. The Claimant informed the Defendant Company's HR Department of his passport issue on 4 March 2018, stating:

> "Hi Ilyssa,
>
> Further to our discussion last week, I'd like to inform you that I have applied for a new passport & should receive it within 10 working days. I had lost my passport in early Jan'18 when I was moving between homes.
>
> As soon as I receive the new booklet, I'll proceed with the cancellation of my old visa.
>
> Kind Regards,
>
> Izram"

5. On 12 April 2018, the Claimant received an email from Ilyssa from HR informing him the following:

> *"Dear Izram,*
>
> *I am writing you to note that I can't not proceed your visa process without cancellation paper. Please provide it as soon as possible and I will finish onboarding process.*
>
> *Kind Regards,*
>
> *Ilyssa"*

Another email was sent on the same day from the CEO of the Defendant Company, mentioning that the Claimant has been working over 3 months in the company without an employment visa and that this is a violation of the DFSA rules.

6. There were numerous emails back and forth between the parties, requesting the date by when the Claimant would submit his cancellation papers for the company to issue the new employment visa, and noted that if the Claimant failed to provide it, the Defendant would place the Claimant on unpaid leave until the visa was cancelled. Once it became clear that the Claimant's visa application was being delayed and there was no indication as to when it would be cancelled, the Claimant received an email on 30 April 2018 from Ingvar, the Defendant's Associate General Manager of HR ("Ingvar"), containing the following:

> *"Dear, Izram,*
>
> *Following the below email, I have to inform you that starting from tomorrow 01.05.2018 you will be not allowed to enter the premises of Ivaah to accomplish your duties.*
>
> *In according to DIFC labour la article 54(3) unless otherwise agreed in writing between the Employer and Employee, an Employer must cancel an Employee's residency visa as soon as reasonably possible upon the Employee's request or, if not so requested, by no later than thirty (30) days after the Termination date.*
>
> *Starting from tomorrow you will not receive salary and you will have one week of time to provide us the cancellation paper otherwise your contract offer letter will be cancelled.*
>
> *For any further information please do not hesitate to contact me.*
>
> *Kind Regards,*
>
> *Ingvar"*

7. On 6 May 2018, the Claimant sent in his cancellation documents, upon which Ingvar confirmed receipt of the cancellation papers with the promise to keep the Claimant updated of when the visa would be issued.

8. On 24 May 2018, the Claimant received an email from Ingvar stating:

> *"Dear Izram,*
>
> *Having discussed with Ijay I Have to inform you that we are not going to proceed with your hiring therefore we will not process your employment visa.*
>
> *A very important file was missed from Ivaah Office and this lack of integrity did not passes unnoticed.*

We kindly ask you return the file taken in Ivaah office this coming Sunday 27TH May at 10am in our head office, Dubai Media City..

Kind regards,

Ingvar"

9. On 5 June 2018 the Claimant filed a Claim in the Small Claims Tribunal ("SCT") against the Defendant. In his Claim Form the Claimant sought ("Entitlements"):

(a) Article 18 of the DIFC Employment Law for the delay in salary payment for the month of February and March;

(b) Unpaid Salaries for the month of May and June 2018 and Article 18 of the DIFC Employment Law for those months;

(c) Turn around flight tickets to Pakistan to issue new residence visa for the Claimant's family;

(d) AED 18,000 cost for re-issuance of employment visa for the Claimant with his old employer and residence visa for the family;

(e) Fines incurred for the delay of the visa for the Claimant and his family;

(f) AED 4,666.6 compensation for the 7-day notice period;

(g) AED 8,000 for the 12 days untaken annual leave;

(h) AED 1,500 compensation for outstanding expenses claim;

(i) AED 27,525 loss of commission for two clients;

(j) Any Court imposed damages with respect to the Claimant's loss of reputation and emotional distress;

(k) AED 15,000 payment for legal fees; and

(l) AED 3,013 payment for Court fees.

The total amount of the Claim was AED 82,000 (equivalent to USD 22,312.92).

10. On 11 June 2018, the Defendant submitted its acknowledgement of service form, intending to defend the whole Claim.

11. The parties attended a Consultation before SCT Judge Ayesha Bin Kalban on 20 and 26 June 2018 but were unable to reach a settlement. Thus, a Hearing was scheduled before me on 8 July 2018.

Particulars of Claim

12. The Claim Form indicated that the Claimant was seeking compensation for the period he has worked for the Defendant according to his Employment Contract. The Claimant contends that there was a delay in salary payments for the months of April and March. The Claimant also adds that salaries should be paid at the end of each month and any delay beyond that should be calculated as per Article 18 of the DIFC Employment Law.

13. The Claimant also claimed unpaid salary from 1 May 2018 until the end of June 2018, with Article 18 for the delay in payment. On 30 April 2018, Ingvar sent an email to inform the Claimant that he must stop coming to the office premises until he hands over his passport with the previous labour card cancellation confirmation, so that the Defendant could seek transfer of visa approval from the relevant Immigration department at the DIFC.

14. On 6 May 2018, the Claimant submitted the labour card cancellation documents to the Defendant. At the time of handover of the cancellation documents, the Claimant was informed by the Defendant that the visa approval request will be made immediately, and the approval should be received from the DIFC Government Services within 2 to 3 working days.

15. The Claimant also added that the salary transfer for the month of April 2018 in the amount of AED 20,000, was also delayed and finally received on 12 May 2018.

16. On 24 May 2018, Ingvar sent an email to the Claimant stating that the employment visa application had not been processed despite follow ups by the Defendant for 2 weeks, and that it will not be processed, citing a false claim about a missing file. On 17 May 2018, in the same email correspondence chain, Ingvar denied any record of employment and claimed that the Claimant was never employed by the Defendant.

17. The Claimant has also added that he was not paid any salary or outstanding amounts by the Defendant since 12 May 2018, being the date of the last salary transfer from the Defendant.

18. As such the Claimant proceeded with filing a Claim requesting the following clarification from the Defendant pertaining to the date of resuming duties as per the employment contract or a formal termination notice clearly stating the last day of employment. A statement over email claiming that the Defendant will not be hiring the Claimant cannot be considered as a Termination Notice. The statement inherently denies employment in the first place which is not applicable. The Claimant has already proven that he was an employee of the Defendant as per the Employment Contract and the salary transfer from the Defendant to the Claimant.

19. The Claimant is also requesting return flight tickets in the amount of AED 4,495 for the Claimant and AED 15,430 for Claimant's family, this being the cost of flying the family to Islamabad in Pakistan and back which would have not been incurred by the Claimant had the Defendant

completed a local transfer of the residency visa within the 30 days following cancellation of the Claimant's labour card.

20. The Claimant also requested all the associated fines incurred from relevant Government bodies relating to the delays in visa processing for him and his family until the date of execution of the judgment issued in this claim.

21. Cost of re-issuance of the Claimant's employment visa and residence visas for his family in the amount of AED 18,000. Due to the termination, the Claimant's previous employer is willing to hire him back, provided the Claimant compensates the former employer for the loss of visa fees due to the premature cancellation of the visas for which the Defendant is responsible.

22. Due to termination and as per the contract the Claimant is requesting 7 days' notice period in the amount of AED 4,667, also the leave pay for the accrued days, 2 days per month until the filing date being a total of 12 days in the amount of AED 8,000.

23. The Claimant also requested the Business Performance Sharing bonus of 30% of net revenue from clients introduced by the Claimant from 1 February 2018. The Claimant provided evidence of a confirmation letter from the clients to prove that and, as such, he is requesting loss of commission from the clients that he introduced, being Isabis, in the amount of AED 8,257.50 and from Idalia in the amount of AED 19,267.50 (the "Clients").

24. Moreover, he is requesting compensation for loss of reputation and emotional distress, the Claimant believes that 3 months' salary of AED 60,000 is a fair compensation for loss of future business with these clients due to the Defendants lack of response in onboarding the customers that has resulted in the loss of credibility of the Claimant with these Clients brought to the Defendant. As proof, the Claimant submitted a grievance letter sent to the Defendant by Mr Idalia.

25. In addition, the emotional distress that the Claimant and his family suffered, given that his payments were delayed despite him having a job and the suffering the family had to face and continues to face with regards to delayed school fees payments and house rent payment delays also require compensation.

26. Further the Claimant requested a Court fees deposit of AED 3,013.50, and outstanding expense claims AED 1,500 - being expense claims submitted using the official laptop left behind in the Defendant's premises and legal fees in the amount of AED 15,000.

The Defence

27. In reply to the Claimants submissions to the issue of the visa, the Defendant asserts that they were constantly following up with the Claimant for his cancellation documents so that the visa could be processed immediately. Despite the repeated verbal reminders, the Claimant never submitted his cancellation to the Defendant.

28. The Defendant also added that, even with the Claimant's misrepresentation of the state of his visa cancellation, the employer continued to pay him his salary up until 30 April 2018, being the last day of the Claimant in the company.

29. The Defendant asserts that it is the Claimant's duty to submit his cancellation papers, which he never did, despite so many reminders, and it was only in March when the Claimant informed the company that he lost his passport. This Defendant asserts that this is sufficient proof that up until March, the Claimant had not acted and was giving false representations to the firm.

30. After all the reminders, the employer sent a final reminder on 18 April 2018 to say that the Claimant would not be paid if the cancellation was not submitted. The Claimant then replied that the cancellation would be completed in a week, however, that was not achieved. Finally, on 30 April 2018, the Claimant was informed that he would not be allowed to enter the office premises as cancellation was not completed by the Claimant and submitted with employer, and the Claimant still did not proceed with cancellation until 30 April 2018.

31. In reply to the Claimant's accusation of the delay in salary, the Defendant explained that as per the company standard procedure and the email sent to the Claimant stating the following, salaries are paid by or on 7th day of each month, as stated:

> *"Dear Colleagues,*
>
> *This is to inform you of upcoming changes to our payroll date. Effective January 2017 the salaries will be paid the 7th of each month sic*
>
> *Time sheets submittal deadline remains the same.*
>
> *If you have any additional questions, please feel free to contact me.*
>
> *Kind regards*
>
> *Ingvar"*

32. This was explained to the Claimant at the time of his joining in the company. Money paid to the Claimant was transferred by the 7th day and was not delayed. The Company's business suffered a financial set back in February and, on 6 March 2018, the Company sent an email to everyone about the delay in the February salary payments. Despite the financial loss, the Defendant paid the Claimant's salary in instalments.

33. In reply to the Claimant's claim for the new employment visa cost, the Defendant denies its obligation to pay the new visa fees which falls under the obligation of the new employer. The Claimant is also claiming his previous visa cancellation fees which should also be paid by the Claimant's previous employer, as such no liability should be put on the Defendant.

34. In reply to the Claimant's request for air tickets for himself and his family, the Claimant's Employment Contract states that he is eligible for an air ticket once he has worked for the Defendant for a period of 12 months, and that was not achieved by the Claimant.

35. As regards the Claimant's employment visa, the Defendant alleged that the application was pending because the Claimant failed to provide his passport and the cancellation papers from his old employer to transfer and fully process his employment visa.

36. In the hearing the both parties reiterated their arguments, presenting what they have previously submitted in their Particulars of Claim and Defence.

Discussion

37. The DIFC Courts and the Small Claims Tribunal have jurisdiction over this case as it concerns employment within the DIFC and the amount in question does not exceed AED 500,000. Further, Clause 9.2 of the Amended Employment Contract states that any disputes shall be subject to the exclusive jurisdiction of the DIFC Courts.

38. This dispute is governed by the DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the DIFC Employment Law) in conjunction with the relevant Amended Employment Contract.

39. The Claimant has made three claims related to this dispute:

(a) Article 18 of the DIFC Employment Law for the delay in salary payment for the month of February and March;

(b) Unpaid salaries for the month of May and June 2018 and Article 18 of the DIFC Employment Law for those months;

(c) Turn around flight tickets to Pakistan to issue new residence visa for the Claimant's family;

(d) AED 18,000 cost for re-issuance of employment visa for the Claimant with his old employer and residence visa for the family;

(e) Fines incurred for the delay of the visa for the Claimant and his family;

(f) AED 4,666.6 Compensation for the 7-day notice period;

(g) AED 8,000 for the 12 days untaken annual leave;

(h) AED 1,500 compensation for outstanding expenses claim;

(i) AED 27,525 loss of commission for two clients;

(j) Any Court imposed damages with respect to the Claimant's loss of reputation and emotional distress;

(k) AED 15,000 payment for legal fees; and

(l) AED 3,013 payment for Court fees.

He also claims that the Defendant should be required to pay the DIFC Courts' Filing Fees in the amount of AED 1,823.02, of which he has already paid half to the DIFC Courts and is required to pay the remaining half upon completion of the case.

40. I will address each of these main issues, responding to the Defendant's arguments in turn.

41. First and foremost, I will address the issue of employment, if there is a valid employment contract to establish the employer/employee relationship. The Claimant presented his Employment Contract in his submissions and referred to it in the hearing and the Defendant did not object to the validity of that Contract, as such the Court is satisfied that the Contract is valid and should be taken as reference to the relationship between the parties. Not having a valid employment visa under the company goes against the Company Law but does not deny the employee his rights under the Contract, as long as the Claimant used to work and receive a monthly salary at the end of each month.

42. I will also establish the start and end date of the Employment Contract, which started on 4 January 2018 with it ending on 30 April 2018, when Ingvar sent an email that the Claimant will be on unpaid leave until the issuing of the visa, and since no visa was issued the relationship ended there, marking 30 April 2018 as the last working day for the Claimant.

43. Now that we have established the validity of the Employment Contract and the duration of the Contract, I can move on to the Claimant's requests and rights under the Employment Contract.

(a) Article 18 of the DIFC Employment Law for the delay in salary payment for the month of February and March

44. The Court is satisfied with the Defendant's email evidence stating that the employees will be paid on the 7th of each month, which proves that there is no delay from the company with regard to salary payments. It should be noted that, at the point when the company faced financial problems to pay the employees' salary, an email was circulated to state that the salaries for that month would be late. The DIFC Employment Law is silent to the issue of late payment of monthly salary if the person is still an employee under the company at that time.

(b) Salaries for the month of May and June 2018 and Article 18 of the DIFC Employment Law for those months

45. As stated above since the Employment Contract ended on 30 April 2018, there are no pending salaries for the months of May and June, as such the Claimant's request is denied.

(c) Turnaround flight tickets to Pakistan to issue new residence visa for the Claimant's family

46. The Claimant's Employment Contract states under Article 3.4

> *"You shall be entitled to receive one (1) return Economy Class air ticket capped at a maximum value of AED2000/-, between your work location and your home town for each (12) months of employment."*

47. The Claimant did not complete the 12 months' employment period and is therefore not entitled to the ticket back to his home country. The Employment Contract also does not make reference to any tickets for the Claimant's family. In light of this, the Court denies the Claimant's request for air tickets for himself and his family.

(d) AED 18,000 cost for re-issuance of employment visa for the Claimant with his old employer and residence via for the family

48. The new employer is responsible for issuing the new visa to the Claimant and his family. Since a new visa was never issued, the Defendant does not bear the cost of the cancellation of any visa towards the Claimant and his family.

(e) Fines incurred for the delay of the visa for the Claimant and his family

49. When any visa is cancelled in the DIFC jurisdiction an individual is put on a 1 month visit visa until a new visa is issued. Since the visa was cancelled on 6 May and the reply from the company came back on 24 May, there were no fines put on the Claimant and his family because they did not exceed the one-month time period. In addition, there was no evidence submitted by the Claimant as proof for the fines incurred before the Court.

(f) AED 4,666.6 Compensation for the 7-day notice period

50. As the termination was on 30 April 2018, and as per the Employee's Contract under 4.2 Probation:

> *"You will be guided by the terms and conditions of the company relating to Probation period which will be six (6) months from the date of your joining or such other time in case there is extension of the probation period*
>
> *During the probation period or the extended time, if any, Your Employment may be terminated with or without cause by either party giving seven (7) days of written notice.*
>
> *."*

51. Since the Claimant was still under his probation period, he is entitled to a 7-day notice period, to be paid in the amount of AED 4,666.6 (monthly salary of AED 20,000/30 days x 7-day notice period)

(g) AED 8,000 for the 12 days untaken annual leave

52. Since the Court established the duration of the Employment Contract commencing on 4 January 2018 and ending on 30 April 2018, with the 7-day notice, the total duration is 4 months and two days. As per the Claimant's Employment Contract under Clause 3.3 Annual/Sick Leave:

> *"You shall be entitled to 24 working days of leave per calendar year, in addition to public holidays of your Host Country."*

53. The DIFC Employment law also states that under Article 28 - Compensation in lieu of vacation leave:

> *"(1) Where an employee's employment is terminated, the employer shall pay the employee an amount in lieu of vacation leave accrued but not taken.* *In the event that the employee has taken more vacation leave than has accrued at the termination date, the employee shall repay the employer the corresponding sum.*
>
> *(2) Compensation in lieu of vacation leave shall be calculated using the employee's daily wage applicable on the employee's last day of employment."*

54. Since the Claimant's daily wage is 666.6 (monthly salary/ 30 days) and he has worked the total of 4 months and two days giving him 6 days annual leave (24 days in a year/ 12 months = 2 days per month). The Claimant is entitled to AED 4,000 (daily wage x 6 days annual leave)

(h) AED 1,500 compensation for outstanding expenses claim

55. As stated in the hearing, the expenses claim has already been submitted to the HR Department, and there was no objection from the Defendant with regard to the amount, so the Court is satisfied that the amount should be awarded to the Claimant.

(i) AED 27,525 loss of commission for two clients

56. The two clients that were introduced by the Claimant to the Defendant have been onboarded, however, the amounts were not transferred to the Defendant's account and, as such, the court is of the view that the Claimant is not entitled to the commission.

(j) Any Court imposed damages with respect to the Claimant's loss of reputation and emotional distress;

57. The Claimant made no submission to quantify his damages to show the alleged loss caused by the Defendant. Therefore, the Claimant has failed to meet his burden of proof to clearly articulate and prove his claims regarding damages for loss of reputation and emotional stress. Thus, I find that the Claimant is not entitled to any damages and his request is denied.

(k) AED 15,000 payment for legal fees

58. Rule 53.70 of the Rules of the DIFC Courts state that:

"The SCT may not order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:

(1) such part of any Court or Tribunal fees paid by that other party as the SCT may consider appropriate;

(2) such further costs as the SCT may assess by the summary procedure and order to be paid by a party who has behaved unreasonably"

As such no claim for legal fees will be paid to the Claimant and his request is denied.

(l) AED 3,013 payment for Court fees

59. The Claimant was partially successful in his Claim and should be awarded half of the amount to be paid back to him by the Defendant. As the Claimant has only paid half of the DIFC Courts' Filing Fee at this time, due to a suspension request being granted to him by the SCT Registrar, the Defendant shall pay the remaining half of the DIFC Courts Filing Fee, amounting to AED 1,506.5, to the DIFC Courts. The Claimant shall not be reimbursed for the portion of the Court Fee that he has already paid.

Article 18 of the DIFC Employment Law

60. In his Claim Form and at the Hearing, the Claimant confirmed that he sought the penalty under Article 18 of DIFC Employment Law to be activated. It provides:

"(1) An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.

(2) If an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the employee a penalty equivalent to the last daily wage for each day the employer is in arrears."

61. Article 18 penalties are contingent upon "wages or any other amount owing" failing to be paid by the Defendant within 14 days of the termination date. As the Claimant's termination date was 30 April 2018, the Defendant has not shown any attempts to pay the Claimant what he was owed within 14 days of his termination. Therefore, in accordance with the DIFC Courts precedent set by the judgment of Justice Roger Giles in *Asif Hakim Adil v Frontline Development Partners Limited* [2014] DIFC CFI 015 and the judgment of H.E. Justice Ali Al Madhani in *Pierre-Eric Daniel Bernard Lys v Elesco Limited* [2014] DIFC CFI 012, the Claimant is entitled to Article 18 penalties running from 14 days after her official date of termination until the date payment is made. For the purpose of Article 18, the relevant date to calculate the 14 days from is that of termination. Accordingly, the Defendant has been in arrears since 15 June 2018 (14 days following termination on 30 April 2018) and the penalty began to accrue at the daily rate of AED 666.6 from this date.

62. As of the date of this Judgment, the penalty is owed for 75 days from 15 May 2018 until 29 July 2018, totaling AED 49,995 (75 x 666.6), with the daily penalty of AED 666.6 continuing to accrue until the date of payment.

Findings

63. The Defendant shall pay the Claimant AED 10,166.6 as to the 7-day notice period, unpaid annual leave and the outstanding Claims.

64. The Claimant's remaining claims are all dismissed.

65. The Defendant shall submit to the DIFC Courts the remaining portion of the DIFC Courts' Filing Fee in the amount of AED 1,506.5.

66. The Defendant shall pay the Claimant AED 49,995 as a penalty pursuant to Article 18(2) of DIFC Employment Law and an additional AED 666.6 per day from the date of this Judgment, until payment is made.



Issued by:

Maha AlMehairi

SCT Judge

Date of issue: 29 July 2018

At: 3pm