THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BETWEEN

KHALED SALEM MUSABEH HUMAD AL MHEIRI

Appellant/Claimant

and

JOHN CAMERON

Respondent/Defendant

ORDER WITH REASONS OF H.E. CHIEF JUSTICE WAYNE MARTIN

UPON the Judgment of H.E. Justice Lord Angus Glennie (the "Trial Judge" or the "Judge") dated 16 June 2025 (the "Judgment")

AND UPON the Claimant's Appeal Notice dated 7 July 2025 seeking permission to appeal the Judgment (the "Initial Application for PTA")

AND UPON the Order of H.E. Justice Lord Angus Glennie dated 28 August 2025 dismissing the Initial Application for PTA

AND UPON the Order of H.E. Justice Lord Angus Glennie dated 7 October 2025 for the Appellant to pay the Respondent's costs of the Initial Application for PTA (the "Initial PTA Costs Order")

AND UPON the Claimant's Appeal Notice dated 18 September 2025 seeking renewed permission to appeal the Judgment (the "Renewed Application for PTA")

AND UPON the Order of H.E. Chief Justice Wayne Martin dated 6 November 2025 granting the Renewed Application for PTA on specific grounds (the "Appeal")

AND UPON the Judgment of the Court of Appeal dated 1 September 2026 (i) allowing the Appeal (ii) setting aside the Judgment in so far as it dismissed the claim on the grounds of deceit and/or mistake (iii) remitting the matter to the Court of First Instance for re-trial on limited grounds (iv) setting aside the Initial PTA Costs Order, and (v) ordering the Respondent to pay costs including the costs of the Initial Application for PTA and the Appeal (the "Costs Order") (the "CoA Judgment")

AND UPON the Respondent's Application No. CA-008-2025/2 dated 8 October 2026, seeking permission to re-open the appeal pursuant to Rule 44.154 of the Rules of the DIFC Courts ("RDC") (the "Application")

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Application to re-open the Appeal is dismissed.

2. There shall be no order as to costs.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 2 November 2026
At: 12pm

SCHEDULE OF REASONS

1. On 1 September 2026 the Court of Appeal allowed the Appeal from the Judgment at first instance and set that Judgment aside insofar as it dismissed the claim on the grounds of deceit and/or mistake and remitted the matter to the Court of First Instance differently constituted for a re-trial limited to the question of whether Mr Cameron was entitled to set aside the Indemnity Agreement on the grounds of deceit and/or mistake. The Court further ordered Mr Cameron to pay 85% of the costs of the Appeal.

2. Mr Cameron has applied to re-open the Appeal in order to challenge the direction that the re-trial be conducted by the Court differently constituted and the Costs Order.

3. For the reasons which follow, Mr Cameron has failed to satisfy the stringent conditions which must be satisfied before an order can be made to re-open an appeal. The Application must therefore be dismissed. As the Application was not served on the Claimant there will be no order as to costs.

Re-opening of final appeals - legal principles

4. RDC 44.154 provides that the Court will not re-open a final determination of an appeal unless:

(1) "it is necessary to do so in order to avoid real injustice;

(2) The circumstances are exceptional and make it appropriate to re-open the appeal; and

(3) There is no alternative effective remedy."

5. It is clear from the terms of the Rule that the conditions are cumulative, and each must be satisfied before an order can be made.[1]

6. This Court has observed that the Rule is intended to set a high threshold for the re-opening of appeals and has adopted an approach similar to that adopted by the English Courts in relation to Rule 52.17 of the Civil Procedure Rules upon which RDC 44.154 has been modelled.

7. In order to establish exceptional circumstances, it must generally be demonstrated that the integrity of the earlier litigation process has been critically undermined and that the process itself has been corrupted.[2] As H.E. Justice Giles observed:

> "It is the corruption of justice that as a matter of policy is most likely to validate an exceptional course; a course which relegates the high importance of finality and litigation to second place."[3]

The Application to re-open

8. RDC 44.159 provides that:

> "A copy of the application for permission must not be served on any other party to the original appeal unless the Court so directs."

9. No direction for service has been made in this case because, for reasons which will be developed, the Application falls manifestly short of satisfying the conditions which must be satisfied before the Appeal could be re-opened.

10. RDC 44.161 provides that the application for permission will be considered on paper by a single judge, and that course has been followed in this case. There is no impediment to that Judge having been a member of the Court which decided the appeal.[4] To the contrary, it will usually be appropriate for an application to re-open to be determined by a member of the Court which heard the appeal.

11. The Application is supported by a witness statement provided by the lawyer who appeared on behalf of Mr Cameron at trial and on appeal. The witness statement contains no evidence but sets out the argument in support of the Application. As the Court has observed many times, this is bad practice. RDC 29.18 provides that the function of a witness statement is to set out the evidence of a witness. The same Rule provides that the statement should not engage in argument. Practice Direction No. 1 of 2016 makes clear that lawyers should not provide argumentative witness statements. These provisions are so often breached by legal practitioners that it is necessary for the Court to consider ways in which this undesirable practice may be more effectively discouraged. Argument should be presented in skeletons, not witness statements.

The direction that the re-trial be conducted by a different Judge

12. On behalf of Mr Cameron it is submitted that he was not given an opportunity to make submissions on the question of whether the re-trial should be conducted before the same Judge or a different Judge. It is submitted that if given the opportunity, it would have been submitted that the more appropriate course would be to refer the matter back to the Judge who had tried the case, relying upon English cases in which that course was taken on the ground of efficiency.

13. These submissions cannot be accepted. The question of whether the matter should be remitted to the Judge for the provision of additional reasons or the decision set aside and a re-trial ordered was raised during the Appeal. If Mr Cameron wished to submit that a re-trial should be conducted before the same Judge, counsel appearing on his behalf had every opportunity to do so. No submission to that effect was made.

14. The submission also disregards the fundamental principles of procedural fairness which underpin every proceeding in the Court, including a re-trial. Those principles require that the parties and the public have no reasonable apprehension that the Judge might be unable to bring a fair and impartial mind to bear upon the issues. In this case the Judge found Mr Al Mheiri responsible for fraud. A reasonable fair-minded observer may well apprehend that the Judge might not be able to exclude that determination from his assessment of the evidence adduced on the re-trial. In these circumstances considerations of efficiency cannot trump considerations of procedural fairness.

15. The submission also overlooks the findings made by the Court of Appeal with respect to the reasons why the trial miscarried. Prominent amongst those reasons was the inadequate way in which the case advanced on behalf of Mr Cameron was pleaded and presented. The conclusion at which the Judge arrived was almost certainly the product of those inadequacies. That is why the Court of Appeal directed that Mr Cameron provide particulars of claim enunciating:

(a) The facts upon which he relies;

(b) The principles of UAE Law; and

(c) The processes of legal reasoning by which he contends that the Indemnity Agreement is liable to be set aside on the grounds of deceit and/or mistake.

16. When those directions are complied with, it is likely that the case presented on behalf of Mr Cameron will be very different to that with which the Trial Judge was required to deal. As the case is to be freshly presented, it should be presented to a Judge who is also fresh, unburdened by recollections of the vague and inconsistent way in which the case was previously presented.

17. In these circumstances there is no basis upon which it can be credibly asserted that it is necessary to re-open the Appeal in order to avoid real injustice. The decision made by the Court of Appeal with respect to the composition of the Court for the purposes of re-trial was a considered

decision made in circumstances in which counsel for Mr Cameron had every opportunity to contribute submissions in order to inform that decision.

18. Nor is there any basis upon which it can be asserted that a direction for re-trial by a Court differently constituted is an exceptional circumstance.

The Costs Order

19. On behalf of Mr Cameron it is submitted that he was not given the opportunity to make submissions in relation to costs, and that if he had been given that opportunity he would have submitted that he should not be ordered to bear the costs of an Appeal which succeeded because the Judge's findings and reasons were inadequate. Mr Cameron further contended that the Costs Order produces an anomalous result, in that the order for costs made by the Judge at trial has been stayed, while he has been ordered to pay 85% of the costs of the Appeal, which will remain his obligation even if he succeeds on the re-trial.

20. It is further contended that the costs of the adjournment should not have been included as costs of the Appeal because it was agreed that each party should bear their own costs of that adjournment - even though there was no evidence to that effect before the Court. It is further submitted that the costs awarded in favour of the Appellant should have been reduced because of the manner in which the Appeal was conducted, including the advancement of grounds of appeal for which permission was not granted and grounds of appeal which the Court directed be reframed.

21. These submissions misconceive the procedures of the Court with respect to orders for costs. The efficient operation of the Court militates against a practice of separate and subsequent consideration of costs issues (other than quantum) in other than exceptional circumstances. Counsel should therefore assume that the Court will pronounce orders for costs at the time a reserved decision is published and place any submissions relating to costs before the Court at the substantive hearing of the matter. If counsel for Mr Cameron wished to provide submissions to the Court with respect to the costs of the Appeal, he had every opportunity to do so during the hearing of the Appeal.

22. While it is correct that the Appeal was allowed because of shortcomings in the Judge's reasons, the submission made on behalf of Mr Cameron again overlooks the fact that the cause of those deficiencies was the inadequate way in which the case was presented on his behalf.

23. Mr Cameron could have conceded the Appeal, but instead chose to oppose it. His unsuccessful opposition to the Appeal was inevitably going to have adverse cost consequences. Those cost consequences should be assessed by reference to all of the costs of the Appeal, including the costs of the agreed adjournment which were part and parcel of the Appeal costs generally.

24. The reduction in the Appellant's costs to 85% reflects and takes into account the matters to which reference has been made in relation to the conduct of the Appeal, being matters of which the Court was well aware.

25. More fundamentally, costs are of course in the discretion of the Court. That discretion has been exercised by the Court taking into account all relevant circumstances in circumstances in which counsel for Mr Cameron had every opportunity to make submissions on the subject during the course of the Appeal. In these circumstances there is no basis upon which it can be contended that it is necessary to re-open the Appeal in order to avoid injustice or that the circumstances are exceptional.

Conclusion

26. As the stringent conditions which attend the re-opening of a final appeal have not been satisfied by this Application, it must be dismissed.