THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE H.E. JUSTICE SHAMLAN AL SAWALEHI

BETWEEN

FELIPE

Claimant

and

FARIDA

Defendant

Hearing: **9 June 2015**

Judgment: **22 June 2015**

JUDGMENT OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON hearing the Claimant and the Defendant

AND UPON reading the submissions and evidence filed and recorded on the Court file

PURSUANT TO Rule 36.40 of the Rules of the DIFC Courts, paragraph 1, 15,16,18,20 and 22 of this order is amended.

Note: The previous incorrect numbers in the order and judgment are in strikethrough, and the amended, correct numbers are underlined for ease of reference.

IT IS ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED **7,692**

2. The Defendant shall pay the Courts fee

The reasons:

3. The Claimant alleged that he had been employed by the Defendant from 15 January 2014 until 2 April 2015 when his employment contract expired.

4. The Claimant requested to be paid all the benefits due at the end of his employment contract. The Defendant had refused to pay the Claimant, which had led the Claimant to file this case before the Court.

5. No settlement was reached by the parties at the end of the consultation and, consequently, the case was sent for adjudication. On 9 June 2015 I heard both parties' submissions.

6. In the Claimant's Particulars of Claim, the Claimant claimed for unpaid leave, gratuity, and one month's notice. He argued that he had not received his dues at the end of his employment contract within 14 days, as the Defendant had reduced his salary without approval from March 2014 to March 2015.

7. In his defence, the Defendant had admitted that the Claimant was entitled to end of service benefits as calculated on the final settlement dated 10 June 2015 , but argued that the Claimant agreed to a new amount for his salary from March 2014 onwards as an alternative option to terminating his contract due to employee poor performance.

8. I hold that, the conduct of the employee by accepting to continue to work for his employer with the new amount of salary since March 2014 until his contract expired was an agreement to the new salary terms of the employment contract. In my view the employee could have refused to receive or accept a different amount of salary, and he could have filed an unauthorized deduction Claim against his employer from the first time he noticed that his salary was reduced without his approval.

9. I have also found that, the Claimant had worked since 15 January 2014 until 2 April 2015, that means that the Claimant has worked for (14) months and (18) days a total of (420days) on the rate of (24.16) calculated as (420 * 21 / 365), and the Claimant's **daily wage** calculated as (AED 3,300 * 12 = 39,600. / 365), is the sum of AED **108.49** per day, and the Claimant's **Daily basic wage** calculated as (AED 2,310 * 12 = 27,720. / 365), is the sum of AED **75.94** per day.

Compensation

10.Therefore, the Claimant is entitled to compensation for **end of service gratuity payment**, calculated for (21) days per year on a proportionate basis (75.94 * 24.16), in the sum of **AED 1834 ,** in accordance with Article 62 (2) (a) and (3) of the DIFC Employment Law .

11. Then I have found that, the Claimant is entitled to compensation **in lieu of termination notice**, calculated for (30) days for continuous working more than 3 months (108.49 * 30) , in the sum of **AED 3,255** , in accordance with Article 59 (2) (b) of the DIFC Employment Law.

12. Furthermore, the Claimant is entitled to compensation **in lieu of vacation leave** for (30) days in accordance with the Claimant's employment agreement point 3, calculated on a pro rata basis (108.49 * 22) in the sum of **AED 2386,** in accordance with Article 27 (1) of the DIFC Employment Law , and in accordance withthe final settlement dated 10 June 2015.

13. As to the Claimant's claim for **unpaid salary**, I am of the view that the Claimant is entitled to payment in lieu for (2) unpaid days only, in the sum of **AED 217,** in accordance withthe final settlement dated 10 June 2015.

14. For those reasons, the Claimant's total compensation is the sum of **AED 7,692,** for unpaid salary, gratuity payment, vacation leave and termination notice in respect of his Employment Contract.

15.Accordingly, I dismiss any other claim advanced by the Claimant.

Issued by:

Maha AlMehairi

Judicial Officer

Date of issue: 22 June 2015

Date of re-Issue: 1 July 2015

At: 3pm