THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

OLIA

Claimant/Appellant

and

ONAWA

Defendant/Appellant

ORDER WITH REASONS OF H.E. JUSTICE ROGER STEWART KC

UPON the claim being filed on 12 May 2025 (the "Claim") and a defence with counterclaim on 10 June 2025 (the "Counterclaim")

AND UPON reviewing the Judgment of H.E. Justice Maha Al Mheiri (the "Judge") dated 19 September 2025 (the "Judgment")

AND UPON reviewing:

(a) the Claimant's Appeal Notice dated 2 October to appeal against the Judgment (the "Permission to Appeal")

(b) The Defendant's Response to Appeal and accompanying documents dated 3 October 2025; and

(c) The Claimant's refutation to the Defendant's Response dated 8 October 2025 and accompanying documents

AND UPON a hearing having been held before H.E. Justice Roger Stewart KC on 24 October 2025 with the Claimant (the "Hearing")

AND UPON reviewing Part 53 of the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. Permission to Appeal is granted.

2. A re-hearing of this matter by way of appeal, be listed, at a time to be fixed with a duration estimate of half a day.

Issued by:
Delvin Sumo
SCT Judge and Assistant Registrar
Date of issue: 6 November 2025
At: 4pm

SCHEDULE OF REASONS

The Parties and the Dispute

1. The Claimant is a senior pilates instructor who was employed by the Defendant's pilates studio located in the DIFC, Dubai, UAE under a contract of employment dated 26 September 2024.

2. The provisions of the contract of employment were not straight-forward and required the working of a minimum number of hours with provision made for the repayment of sums paid for hours not worked in the event of termination of employment within 3 years.

3. As was accepted by the Defendant's representative at the Hearing, the Defendant failed to provide the Claimant with a "written itemised pay statement in respect of each Pay Period" which included the amount of remuneration payable and the amount of any deduction from that amount and the purpose for which it was made in accordance with the mandatory requirements of Article 15 of the DIFC Employment Law, DIFC Law No. 2 of 2019.

4. Article 15 reads as follows:

"Itemised pay statements

(1) An Employee is entitled to receive as soon as reasonably practicable a written itemised pay statement in respect of each Pay Period that includes:

(a) The amount of the Remuneration payable; and

(b) The amount of any deduction from that amount and the purpose for which it is made.

(2) An Employer satisfies the requirements in Article 15(1) if it provides electronic access to itemised pay statements to an Employee containing the requisite details and such statements are capable of being printed."

5. During the course of 2025, it appears that the relationship deteriorated between the Claimant and the Defendant. The reasons for that deterioration are in dispute between the parties with the Defendant making various allegations of unprofessional behaviour against the Claimant and the Claimant rejecting such allegations. There were also disputes as to the number of hours which the Claimant worked and the reasons as to why she had not worked more hours.

6. On 10 May 2025, the Defendant issued a written warning to the Claimant accompanied by a message from the Claimant's manager, Ms Olisa . The written warning made allegations:

(a) of failing to achieve the number of working hours required (stating that 25 hours per week were being achieved rather than 30);

(b) That the Claimant had repeatedly failed to clean and reset equipment, complete MBO checkouts and follow-ups and send session reminders and pre-book clients; and

(c) That the Claimant had been guilty of the use of inappropriate language during a recent meeting.

7. The accompanying message was largely positive in tone stating, for example "I want to be clear: you are an important part of the Dubai team. I've always appreciated your energy and the role you play in the studio, and I believe you have a lot to contribute as we continue to grow. The changes we're asking for are achievable, and I'm confident that with a bit of focus and support, we can get things back on track quickly."

8. On 12 May 2025, the Claimant issued proceedings against the Defendant alleging that she had been subject to harassment and seeking protection in relation to the same.

9. On 15 May 2025, the Claimant was placed on administrative leave and, according to the Defence and Counterclaim, was dismissed on 20 May 2025 following an internal investigation for:

(a) Encouraging a former employee to seek compensation from the Defendant;

(b) Insubordination and "refusal to comply with basic offboarding instructions;

(c) Negative influence on other team members and breach of loyalty; and

(d) Refusal to attend calls or cooperate with management while on administrative leave.

10. The Defendant alleged that it had overpaid the Claimant for the period January and February 2025 and sought AED 17,000 in respect of the alleged overpayments.

11. The Claimant disputed the allegations as well as the amount of the alleged overpayments.

12. It follows that the main issues for determination were:

(a) Whether there had been harassment or victimisation as alleged by the Defendant;

(b) Whether there had been a lawful immediate termination without notice on 20 May 2025; and

(c) Whether the Defendant was entitled to recover the alleged overpayments or whether the Claimant was entitled to compensation including in respect of dismissal without notice.

Relevant Provisions of the DIFC Employment Law

13. Aside from the provisions requiring the provisions of itemised pay statements, with which the Defendant failed to comply, the following provisions of the DIFC Employment law No. 2 2019, are relevant to the dispute:

(a) The requirements in Article 16 to keep payroll records including of the hours worked on each day by an Employee and each deduction from remuneration and the reasons for it;

(b) The restrictions on deductions from remuneration contained in Article 20;

(c) The provisions concerning sick leave in Article 35;

(d) The general duties of employees contained in Article 58;

(e) The provisions concerning victimisation contained in Article 60 and, in particular, the requirement on an employer not to victimise an employee which includes subjecting an employee to a detriment or dismissing them because of doing a protected act which includes issuing proceedings under Part 9 of the law or making an allegation that there has been a contravention of Part 9; and

(f) The provisions as to termination concerned in Articles 62 and 63.

The Judgment

14. In the Judgment, the Judge:

(a) Found that the termination for cause was justified following repeated misconduct from the Defendant and failed to comply with essential administrative and offboarding procedures;

(b) Held that the decision to terminate the employment was lawful and proportionate under Article 59 of the DIFC Employment Law with the consequence that the Claimant was not entitled to payment in lieu of notice or end of service entitlements;

(c) That payroll records confirmed overpayment for the month of May including for base salary and housing allowance;

(d) That there was no presentation of sick leave entitlement before filing her claim but that there had been submission of leave for the period from 18 to 20 May 2025; and

(e) That the Claimant had been overpaid for January and February 2025.

15. The Judge did not refer to the Claimant's claims of harassment and did not consider any issues of victimisation or the possible protected status of the Claimant's acts.

The Applicable Tests for Permission to Appeal

16. Article 21 of the DIFC Courts Law No. 2 of 2025 provides that judgments of the SCT may be appealed before the Courts of First Instance in accordance with the procedures established under the DIFC Laws, DIFC Regulations, Rules of the Courts or any Practice Direction or Order where the appeal relates to:

(a) A question of law;

(b) An allegation of a miscarriage of justice;

(c) An issue or procedural fairness; or

(d) A matter provided for in or under DIFC laws.

17. Article 21 of the DIFC Courts Law No. 2 of 2025 is in the same material terms as Article 28 of its predecessor, the DIFC Court Law No. 10 of 2004.

18. Under RDC 53.91, permission to appeal may be given only where:

(a) The Court consider that the appeal would have a real prospect of success; or

(b) There is some other compelling reason why the appeal should be heard.

19. RDC 53.87 provides that in order for the Court of First Instance ("CFI") to allow an appeal from the SCT, the decision has to be wrong or unjust because of procedural unfairness or a miscarriage of justice and/or wrong in relation to any other matter provided for or under DIFC law.

20. RDC 44.118.1 provides that the CFI will allow an appeal from a decision of a tribunal provided for in the Law, DIFC Rules or Rules of Court where the decision was:

(a) Wrong in relation to a question of law;

(b) Unjust because of procedural unfairness or a miscarriage of justice; and/or

(c) Wrong in relation to any other matter provided for in or under DIFC law.

21. It follows that permission to appeal can be granted in the present case if I consider that it would have a real prospect of success on one of the above grounds.

The Proposed Appeal

22. In her Appeal Notice, the Claimant puts forward 9 grounds of appeal:

(a) Ground 1 being alleged procedural irregularity and overlooked evidence in failing to consider what was said to be key evidence considered including fireflies recordings which were not disclosed;

(b) Ground 2 being alleged misapplication of the termination law in that termination was upheld without proof of misconduct;

(c) Ground 3 being in respect of harassment, retaliation and coercion in that the dismissal followed immediately after filing a claim and that the sequence of events suggested retaliation in breach of the Employment Law;

(d) Ground 4 being a failure to pay for administrative leave when the Defendant claimed that payment was made when it was not;

(e) Ground 5 being a misapplication of the grace period clause with an allegedly incorrect formula;

(f) Ground 6 being in respect of alleged misapplication of the minimum contracted hours clause and forced and unpaid labour;

(g) Ground 7 being in respect of allegedly wrong final pay calculations and unlawful deductions in respect of accrued leave and a deduction of 20 hours from final salary which was alleged to be unlawful together with a failure to pay DEWS contributions;

(h) Ground 8 being in respect of a failure to produce fireflies recordings when they had not been produced; and

(i) Ground 9 being an allegation that the judgment was contrary to justice in focussing on salary arithmetic whilst overlooking exploitation, unpaid labour and procedural irregularities.

Discussion

23. The first two grounds of appeal concern alleged failure to consider factual matters. As such they do not, by themselves, form part of what could be considered on an appeal from the SCT.

24. Grounds 3 and 9 focus on alleged procedural irregularities and failure to consider allegations of harassment, retaliation and coercion.

25. In relation to these grounds:

(a) The chronology which I have set out above and, in particular the close coincidence between the commencement of proceedings and the Claimant's summary dismissal demonstrates that the Court had to consider carefully as to whether the Claimant was dismissed as a result of the making of a protected act;

(b) There is a remarkable contrast between the terms of the written warning of the 10 May and the almost friendly message which accompanied it and the placing of the Claimant on administrative leave five days later only three days after this claim was commenced;

(c) The grounds for dismissal are, at least at first sight, difficult to understand given the sequence of events:

(i) Failure to comply with offboarding procedures could only, one would have thought, be relevant after a decision to dismiss had been made;

(ii) Further the failure to provide a sick certificate in respect of the period of administrative leave would appear unlikely to justify dismissal given the short time frame;

(iii) The grounds of dismissal do not appear to tie in with the warning; and

(d) There is no reference at all, in the judgment, to consideration of the timings set out or as to whether the Claimant had been victimised.

26. In the course of argument I understood the Defendant's representative to assert that the dismissal had only partly taken place as a result of the institution of proceedings, Although it is possible that this was a mistake, it is apparent that the apparent acceptance of a causal link between the institution of proceedings and dismissal is a matter of considerable concern to the Court.

27. In the circumstances, I consider that it does not appear that there was any investigation of the Claimant's main allegations of harassment or the possible part they played in the Claimant's dismissal. I further consider that this was a serious procedural irregularity which may well have led directly to the findings that the dismissal was fair, that no notice was required and that repayments were due to the Defendant.

28. In the circumstances, I consider that grounds 3 and 9 have real prospects of success. I take the view that the only effective remedy in this case is that there should be a re-hearing of the case at which the Claimant's allegations can be considered with the re-hearing taking place by way of appeal.

29. The remaining grounds involve alleged calculation errors and proceed upon the basis that there was an entitlement, in principle, for repayment. Consideration of these grounds is hindered by the lack of clarity as to what sums were deducted, when and for what. They are also affected by the Defendant's admitted failure to provide itemised pay statements as required by the law.

30. The payments fall for reconsideration in any event given my conclusions in respect of grounds 3 and 9 but will need to be considered on the re-hearing.

Conclusion

31. Protection against victimisation is an important part of the DIFC Employment Law as are the requirements for employees to be provided with proper statements of pay. Justice requires that these matters are considered carefully. This does not appear to have occurred at the original hearing. They will have to be considered on the appeal. Although the sums at stake are relatively small, they are of importance to the parties and, in particular, the Claimant.