THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

MAHUTA

Appellant/Defendant

and

MANWARI

Respondent/Claimant

JUDGMENT OF JUSTICE SIR JEREMY COOKE

UPON the Small Claims Tribunal Claim No. SCT-293-2022 dated 29 July 2022

AND UPON the Judgment of H.E. Justice Nassir Al Nasser dated 1 November 2022 granting the Claim (the "Judgment")

UPON the Defendant's Appeal Notice dated 11 November 2022 seeking permission to appeal against the Judgment (the "Permission Application")

AND UPON the Order of H.E. Deputy Chief Justice Ali Al Madhani dated 24 January 2023 granting the Permission Application

AND UPON hearing the Claimant's representative at the appeal hearing held on 29 March 2023 (the "Hearing")

AND UPON the Defendant failing to appear at the Hearing

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed with liberty to apply.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 28 April 2023
At: 11am

SCHEDULE OF REASONS

1. The Appellant failed to appear at the hearing to pursue the Appeal and the appeal is therefore dismissed. The Appellant was notified of the intention to fix a date and has failed to respond.

In any event:

2. An appeal from the Small Claims Tribunal (the "SCT") to this Court takes place by way of a review of the decision made below. It is not a hearing of all the evidence afresh unless there are particular reasons for doing so.

3. In this case, the matter was referred by the SCT to an expert, as is commonly the case for matters of this size, and the expert produced a report which essentially was adopted by the lower Court (the "Expert Report").

4. I have been through the Expert Report because the main point taken in the papers leading to the appeal is that objections are made to that report on the basis of a failure to deal with key pieces of evidence and on the basis that the expert's methodology was flawed. It is said that the Court should therefore not have given the Expert Report the weight it did.

5. A series of criticisms are made in a letter of 25 October 2022 which really do not grapple with the points made by the expert at all.

6. The Expert Report sets out all the documentary evidence to which the expert was referred and each party was given a full opportunity to put before the expert all the materials that it wished to rely on. So, the expert fully considered all those matters and came to a view which the Court has adopted.

7. There is only one area of potential dispute as a matter of law as opposed to question of fact relating to the fulfilment of the contract and the specification and that area of law turns on responsibility for protection of the work during the course of and following its completion.

8. This is a matter which the expert grappled with because there is no express term in the purchase order that deals with it but in accordance with ordinary practice, one would not expect a sub-contractor to maintain a watchman or guard of any kind in relation to the work once it was completed.

9. There is evidence in the documents of damage caused by others and in those circumstances, I see no basis upon which this appeal could in any event succeed were it to be pursued.

10. Even if I had reason to consider the substance of the appeal, therefore I would have dismissed it in any event and there is therefore no purpose served in prolonging the agony for the parties, and the appeal is dismissed for that reason also.