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 OF DIFC COURTS

BEFORE H.E. JUSTICE NASSIR AL NASSER

BETWEEN

LINGAN

Claimant

and

LAJNI

Defendant

Hearing : **17 October 2021**
Judgment : **20 October 2021**

JUDGMENT OF H.E JUSTICE NASSIR AL NASSER

UPON this Claim being filed on 27 July 2021

AND UPON a Hearing having been held before H.E Justice Nassir Al Nassir on 17 October 2021, with the Claimant and the Defendant's representative in attendance

AND UPON reviewing the documents and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of **AED 491,438.20**.

2. The Defendant shall pay the Claimant a portion of the Court filing fee in the sum of **AED 9,828.76**.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of issue: 20 October 2021
At: 9am

THE REASONS

The Parties

1. The Claimant is Lingan (the "Claimant"), an individual filing a claim against the Defendant regarding his employment at the Defendant company.

2. The Defendant is Lajni (the "Defendant"), a company registered in the DIFC, Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 1 May 2017 (the "Employment Contract").

4. On 27 July 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking various employment claims in the sum of AED 998,119.

5. On 1 August 2021, the Defendant filed an Acknowledgment of Service contesting the jurisdiction of the SCT.

6. On 4 August 2021, the Claimant amended the claim form and reduced his employment claims to fall within the financial limitations of the SCT, being in the amount of AED 500,000 (the "Amended Claim").

7. On 11 August 2021, the Defendant filed an Acknowledgment of Service with the intention to defend all of the Amended Claim.

8. On 17 August 2021, a consultation was held before SCT Judge Delvin Sumo but the parties were unable to reach a settlement.

9. On 25 August 2021, the Defendant filed a Counterclaim in the sum of AED 5,576,845 (the "Counterclaim").

10. On 6 September 2021, a jurisdiction hearing was held before H.E. Justice Maha Al Mheiri.

11. On 30 September 2021, a judgment in relation to jurisdiction was issued with H.E Justice Maha Al Mheiri ordering that the Claimant's Amended Claim remain in the SCT and the Defendant's Counterclaim to be transferred to the Court of First Instance of the DIFC Courts.

12. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 17 October 2021.

The Claim

13. The Claimant's case is that he was employed with the Defendant from 1 May 2017. The Claimant submits that, on 12 April 2021, the Defendant terminated the Claimant's employment with immediate effect by way of a letter.

14. The Claimant also submits that his salary upon termination was in the sum of AED 75,000 per month, consisting of basic salary in the sum of AED 45,000, house and rent allowance in the sum of AED 22,500, and transportation allowance in the sum of AED 7,500.

15. The Claimant's Amended Claim in the sum of AED 500,000 consists of the following breakdown:

(a) The sum of AED 30,000 for unpaid salary from 1 April 2021 to 12 April 2021;

(b) The sum of AED 225,000 as payment for three months' notice;

(c) The sum of AED 103,465 as payment for end of service gratuity;

(d) The sum of AED 100,000 as payment in lieu of accrued but untaken annual leave. The Claimant submits that he is entitled to AED 75,000 for the year of 2020 and AED 25,000 for four months of 2021;

(e) The sum of AED 54,000 as payment for 4 tickets for the Claimant and his family for the period of 3 years' air fare ticket allowance (2018, 2019 and 2020). The Claimant submits that as per the Employment Contract he is entitled to AED 4,500 per family member per year (for himself, his wife and up to three children) however, the Claimant alleges that the Defendant only paid him once during the course of (2018, 2019 and 2020); and

(f) The Court fees in the sum of AED 19,973.63.

The Defence

16. The Defendant submits that the Employment Contract between the parties concluded that the Claimant be paid a total monthly salary of AED 40,000 per month, not AED 75,000.

17. The Defendant submits that the Claimant failed to produce a single document signed by the Company COO, Mr. Lub, agreeing on such salary increment.

18. As stated above, the Defendant's Counterclaim in the sum of AED 5,576,845 has been transferred to the CFI for determination.

Discussion

19. This dispute is governed by DIFC Law No. 2 of 2019, as amended by DIFC Law No. 4 of 2020 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

20. I shall first determine the Claimant's monthly salary before determining the Claimant's claims as the parties are in dispute as to whether the Claimant's salary is in the amount of AED 75,000 or AED 40,000, as the Defendant argues.

21. The Defendant submits that as per the Employment Contract the Claimant is entitled to the sum of AED 40,000 per month. The Defendant also adds that it has never signed or agreed on a salary increment to the sum of AED 75,000.

22. The Claimant on the other hand argues that his salary should be in the sum of AED 75,000 per month, and that such a sum was approved by the company shareholder and COO Mr. Lub via WhatsApp (in which there was an attachment that reflects that the Claimant's salary for May 2020 was to be in the sum of AED 75,000).

23. The Claimant submitted payment slips which also reflect that the Claimant's salary is in the sum of AED 75,000. In addition, the Claimant provided the court with salary certificates which also demonstrate that the Claimant's salary is in the amount of AED 75,000.

24. The Defendant argues that the Claimant, as the CEO of the Company, increased his own salary and issued such documentation for his own benefit. The Defendant failed to provide any evidence in support of this assertion.

25. Therefore, pursuant to the evidence provided, I find that the Claimant's salary was in the monthly sum of AED 75,000.

26. Below I shall set out each of the Claimant's claims and provide my determination as to whether the Claimant is entitled to these claims.

Salaries

27. The Claimant claims that he is entitled to his salary from 1 April 2021 to 12 April 2021 (the termination date) in the sum of AED 30,000.

28. As established above, the Claimant's salary is AED 75,000 per month. I shall calculate the following claim based on this salary.

29. AED 75,000 x 12 month/365 days = AED 2,465.75 daily salary x 12 days = AED 29,589.

30. I find that the Claimant is entitled to the sum of AED 29,589 for the period from 1 April 2021 to 12 April 2021.

Notice period

31. The Claimant claims the sum of AED 225,000 in relation to payment of a three months' notice period. The Claimant argues that on 12 April 2021 the Defendant terminated the Claimant's employment in writing with immediate effect.

32. As per the terms and conditions attached to the Employment Contract, following the completion of the probation period, either party may terminate this contract by giving 3 months' notice in writing.

33. The Defendant argues that payment in lieu of notice is not the Claimant's right under the Employment Contract - it is always at the discretion of the employer whether or not the employee is required to serve the notice period. The Defendant argues that Clause 16.3 of the Employment Contract provides that the Claimant *"shall have no right to receive payment in lieu unless the company has exercised its discretion in Clause 16.2"*.

34. Clause 16.2 provides as follows

> "Subject to Article 81 of the UAE Labour Law and notwithstanding Clause 16.1, the Company may, in its sole and absolute discretion, terminate the appointment at any time and with immediate effect by paying a sum in lieu of notice (`Payment in lieu') equal to the Remuneration (as at the termination date) which you would have been entitled to receive under this Contract of Employment during the notice referred to in clause 16.1 (or, if notice has already been given, during the remainder of the Notice Period)".

35. In addition, Clause 16.3 provides that *"you shall have no right to receive a payment in lieu unless the company has exercised its discretion in clause 16.2"*.

36. Firstly, the UAE Labour Law does not apply in the DIFC. The Defendant is a DIFC registered entity and therefore the DIFC Employment Law shall govern this dispute.

37. Secondly, when interpreting the above, I find that the Company (Defendant in this case) has sole discretion to terminate the appointment at any time and with immediate effect by paying a sum in lieu of notice.

38. I find that the Defendant exercised its discretion in terminating the Claimant's employment with immediate effect. Therefore, the Claimant shall be entitled to 3 months' notice as per Clause 16.1 of the Employment Contract and its definition in the terms and conditions attached to the Contract.

39. Therefore, the Claimant's salary is AED 75,000 x 3 months = AED 225,000 as payment in lieu for the three months' notice period.

Annual Leave

40. In relation to payment in lieu of accrued but untaken annual leave, the Claimant claims the sum of AED 100,000 in relation to his accrued but untaken annual leave. The Claimant argues that he is entitled to AED 75,000 for the year 2020 and the sum of AED 25,000 for the 4 months of 2021.

41. As per the terms and conditions of the Employment Contract, it is stated that *"you will be entitled to 25 working days (35 Calendar days) of annual leave. detail of leave usage will be in accordance with the company policy. All leaves must be agreed in advance with your line manager."*

42. The Defendant failed to provide evidence of the Claimant's leave applications during the period of 2020 and the 4 months of 2021.

43. As per Article 28(3) of the DIFC Employment Law *"compensation in lieu of Vacation Leave, or any amount owed by the Employee in respect of excess Vacation Leave taken, shall be calculated using the Employee's daily wage at the termination date"*.

44. The calculation shall be as follows:

> AED 900,000 (annual salary) / 260 days of work per year = AED 3,461.53
>
> AED 3,461.53 x 25 days = 86,538.25 for the year 2020.
>
> AED 3,461.53 x 8.32 days = AED 28,799.92 for the 4 months of 2021.

45. Therefore, I find that the Claimant is entitled to the sum of AED 115,338.17. However, the Claimant only claimed the sum of AED 100,000 in relation to his accrued but untaken annual leave and I shall therefore award the sum as claimed by the Claimant in this regard.

Flight Ticket

46. The Claimant claimed the sum of AED 54,000 as payment in lieu of a flight ticket. The Claimant argues that during the tenure of his employment he did not receive his annual air ticket entitlement for 2018, 2019 and 2020.

47. Clause 7 of the Employment Contract provides that *"you will be provided with a round trip air ticket to your nominated home country in economy class as per the attached summary of terms and conditions"*.

48. The terms and conditions of the Employment Contract provides that *"you will be entitled for leave travel allowance prorated, paid once a*

year in January in the amount of AED 4,500 per person (for self, wife and up to 3 children)."

49. The Claimant claims the sum of AED 54,000 for the years 2018, 2019 and 2020 for himself, his wife and two children.

50. As per the Employment Contract, I find that the Claimant is entitled to payment in lieu of an air ticket in the sum of AED 54,000 for the period of 2018, 2019 and 2020.

End of Service Gratuity

51. The Claimant claims the sum of AED 103,465 as end of service gratuity.

52. Article 66 of the DIFC Employment Law states, where relevant, that:

> "(1) An Employee who is not required to be registered with the GPSSA under Article 65(`), and who completes continuous employment of at least one (1) year with their employer, before or after the Qualifying Scheme Commencement Date is entitled to a Gratuity Payment for any period of service prior to the Qualifying Scheme Commencement Date on the termination of their employment. .
>
> (2) An Employee's Gratuity Payment shall be calculated as follows:
>
> > (a) an amount equal to twenty one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement Date; and
> >
> > (b) an amount equal to thirty (30) days for the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date. .
>
> .
>
> (7) From the Qualifying Scheme Commencement Date an Employer shall, on a monthly basis, pay to a Qualifying Scheme, for the benefit of each Employee who is not an Exempted Employee, an amount equal to as least the Core Benefits, which shall be calculated as follows:
>
> > (a) five point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first (5) years of an Employee's service, inclusive of any period of employment of Secondment served to prior to the Qualifying Scheme Commencement Date; and
> >
> > (b) eight point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service.
> >
> > ..."

53. The gratuity payment to be paid must be for any period of service prior to the Qualifying Scheme Commencement Date, which is defined in the Law to be 1 February 2020. Therefore, I find that the Claimant is entitled to his gratuity payment, as accrued until 31 January 2020, calculated below.

54. The Claimant's basic wage is AED 45,000, and the gratuity payment is to be calculated against the period of service from the Claimant's first working day with the Defendant until 31 January 2020. The Claimant worked from 1 May 2017, meaning the period of service to be calculated for gratuity is 2 years and 8 months.

Gratuity = AED 45,000 basic wage x 12 months / 365 days = AED 1,479.45 per day x 21 days (for the two years) = AED 62,136.9

Gratuity for the 8 months = 21 days / 12 months = 1.75 days per month x 8 months = 14 days x 1,479.45 = AED 20,712.3

In accordance with the above, the Claimant is entitled to AED 82,849.2 for gratuity payment.

55. The Claimant confirmed that he received his DEWS payment upon the termination of the Employment Contract.

The Return of Cheques

56. The Claimant argues that during the month of March 2021, the Defendant cheques were returned from various companies due to insufficient funds. The Claimant argues that he had signed these cheques on behalf of the Company in respect of properties owned by the Shareholder and COO, Mr Lub A disagreement arose because the Claimant was personally liable for the cheques in circumstances whereby Mr. Lub had removed funds from the Company.

57. I find that that the DIFC Courts has no jurisdiction to determine the claim for the return of the Cheques, and it is advisable that the Claimant seek legal advice in this regard.

Court Fees

58. The Claimant claimed the sum of AED 19,973.63 in regard to the Court fees. However, the Claimant was only partially successful in his claims, in the sum of AED 491,438.20. Therefore, I find that the Court fee shall be calculated based on the successful claims of the Claimant. Accordingly, the Defendant shall pay the Claimant the sum of AED 9,828.76 in relation to the Court fees.

59. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 491,438.20.

60. The Claimant is also entitled to the Court fee paid for the filing of this Claim, and in taking into consideration the Claimant's failure to succeed on all its claims, I find it appropriate that the Defendant be ordered to pay the Court fee applicable to the judgment sum set out above, in the amount of AED 9,828.76.