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 SCT JUDGE NASSIR AL NASSER

BETWEEN

MANIATA

Claimant

and

MUNTYCOMPANY LIMITED

Defendant

Hearing : **27 January 2021**
Judgment : **3 February 2021**

AMENDED JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 29 December 2020

AND UPON a Hearing being held before SCT Judge Nassir Al Nassir on 27 January 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 Claimant's claim shall be dismissed.

2. Each party shall bear its own costs.

Issued by:
Nassir Al Nasser
SCT Judge & Registrar
Date of Issue: 3 February 2021
Re-issue date: 4 February 2021
At: 11am

THE REASONS

The Parties

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

2. The Defendant is Munty Company Limited (the "Defendant"), a company registered in the DIFC.

Background and the Preceding History

3. On 26 September 2018, the Claimant signed an Employment Contract with Munty Office, a company established in Dubai, UAE with a salary of AED 17,000. On 24 February 2019, the Claimant was seconded for a period of 12 months to the Defendant. On 8 March 2020, the Claimant was seconded for another period of 12 months to the Defendant. Therefore, the underlying dispute arises over the secondment of the Claimant by the Defendant on 24 February 2019 and 8 March 2020.

4. On 29 December 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking various employment claims in the sum of USD 30,100.

5. On 30 December 2020, the Defendant filed an acknowledgment of service setting out its intention to defend all of the Claim.

6. On 4 January 2021, a consultation was listed to be held before SCT Judge Hayley Norton, but the parties were unable to reach a settlement. Therefore, in accordance with the Rules of the DIFC Courts, this matter was listed for a hearing before me on 27 January 2021. Both the Claimant and the Defendant's representative were in attendance at the Hearing.

7. On 11 January 2021, the Claimant amended the claim seeking the total sum of USD 38,100.

The Claim

8. The Claimant's case is that he was seconded with the Defendant on 24 February 2019 and on 8 March 2020 for a period of 12 months. The Claimant alleges that on 29 October 2019, the Defendant reduced the Claimant's salary from AED 17,000 per month to AED 9,100 for a period of 14 months.

9. The Claimant submits that during that period he sent various emails to the Defendant enquiring about the reduction in his remuneration but alleges that no response was received from the Defendant.

10. The Claimant also submits that the Defendant failed to enrol into an insurance policy for the provision of health insurance during the period of his employment.

11. The Employment Contract states that the Claimant's salary was AED 17,000 consisting of a basic salary in the amount AED 12,000 and allowances in the sum of AED 5,000.

12. The Claimant filed a claim seeking the sum of USD 38,100 which consists of deducted salaries for a period of 14 months (USD 30,100) and damages (USD 8,000).

The Defence

13. The Defendant submits that the Claimant's services were temporarily seconded to the Defendant from a UAE onshore entity, Munty Office ("Munty O"), pursuant to a secondment card which is valid up until 9 March 2021. In respect of the Secondment, the Defendant's relationship with the Claimant is governed by the applicable provisions within the DIFC Employment Law No. 2 of 2019 (as amended).

14. The Defendant adds that throughout this period of secondment, the Claimant remained an employee of Munty O pursuant to an employment contract effective on 26 September 2018. The Munty O employment Contract provides for a monthly remuneration of AED 17,000 and it is governed by the Federal Labour Law No. 8 of 1980, as amended (the "UAE Labour Law").

15. The Defendant responded that the claim has three separate heads of claim, namely: (a) unilateral reduction in salary; (b) failure to provide health insurance; and (c) damages.

16. In relation to the Claimant's claim in regard to a unilateral reduction in salary, the Defendant submits that at no time has the Defendant paid the Claimant a wage. His remuneration at all times been paid by Munty O as the primary employing entity. Therefore, any claim related to a reduction of salary should be directed towards Munty O as the employing entity.

17. The Defendant also alleges that the SCT has no jurisdiction to hear and determine this claim as it relates to an alleged deduction from wages by Munty O, an entity established in onshore UAE, which is not a party to these proceedings and which has an onshore employment contract with the Claimant governed by UAE Labour Law.

18. In relation to the Claimant's claim regarding the Defendant's failure to provide health insurance, the Defendant concurs with this claim and submits that it is taking remedial steps to rectify the position. However, the Defendant submits that the Claimant failed to particularise his claim which, the Defendant submits, should clearly set out the damage that the Claimant has suffered in the absence of health insurance coverage and accordingly, there is no monetary claim before the SCT that requires determination.

19. In relation to damages, the Defendant alleges that the Claimant has failed to specify and/or particularise the head of claim in respect of which he considers damage has arisen nor the basis upon which he has calculated the aforementioned damages.

Discussion

20. This dispute is governed by UAE Labour Law as per the Employment Contract signed between the Claimant and Munty O. However, Article 4(2) of the DIFC Employment Law states that:

> "subject to Article 4(3) an Employee may be employed in the DIFC pursuant to an employment contract subject to an applicable law other than this Law, in instances where: (a) the Employee is working in or from the DIFC on the basis of a secondment."

21. Article 4(3) of the DIFC Employment Law states the following:

> "notwithstanding the provisions of Article 4(2), the following provisions of this Law shall remain to be applicable to an Employer or an Employee during a secondment pursuant to Article 4(2)(a) or to an Employee employed in the DIFC pursuant to Article 4(2)(b) or 4(2)(c):
>
> a. Part 2 - Articles 12, 13, 14, 15 and 16;
>
> b. Part 3 - Articles 18, 20 and 21;
>
> c. Part 4 - Articles 22, 23, 24, 25, 26 and 32;
>
> d. Part 7 - all Articles;
>
> e. Part 11 - all Articles, insofar as they relate to any of the Articles referred to in sub-sections (a) to (d) above; and
>
> f. Schedules 1 and 2 - all schedules insofar as they relate to any of the Articles referred to in sub-sections (a) to (e) above."

22. Article 16(1)(c) of the DIFC Employment Law states the following:

"an Employer shall keep records of the following information: (c) the Employee's remuneration (gross and net, where applicable), and the applicable pay period".

23. Before discussing the merits of this dispute, I shall first determine whether the DIFC Courts has the jurisdiction to hear and determine this claim.

24. I note that the Claimant's employer, in accordance with the Employment Contract dated 26 September 2018 is set out to be Munty O.

25. The Defendant submits that the Claimant's salaries were paid by Munty O, not the Defendant. The Defendant has presented evidence in support of this submission in the form of several payment receipts made to the Claimant which reflect that his monthly salaries were paid by Munty O.

26. The Claimant was only seconded to the Defendant, but his Employment Contract and salaries were with an onshore company located in Dubai, UAE and not with the Defendant. Therefore, I find that the DIFC Courts has no jurisdiction to hear and determine Employment claims related to companies registered in Dubai, UAE.

27. Article 5(A) of Law No (12) of 2004 on the Judicial Authority at the Dubai International Financial Centre, as amended by Law No (5) of 2017 reads as follows:

"1. The Court of First Instance will have exclusive jurisdiction to hear and determine:

a. The civil, commercial and labour claims and actions to which the DIFC or any DIFC body, DIFC establishment or licensed DIFC establishment is a party.

b. The civil, commercial and labour claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalized or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract.

c. The Court of First Instance shall have exclusive jurisdiction to hear and determine the civil, commercial and labour claims and actions arising out of or relating to any incident or transaction, which has been wholly or partly performed within DIFC and is related to DIFC activities;

d. Appeals against decisions or procedures made by DIFC bodies where DIFC Laws and DIFC Regulations permit such appeals and claim;

e. Action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

2. The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions.

3. The Court of First Instance may hear and determine any civil, commercial and labour claims or actions falling within its jurisdiction if the parties agree in writing to submit to the jurisdiction of another court over the claim or action but such court dismisses such claim or action for lack of jurisdiction. The Court of First Instance may not hear or determine any civil, commercial and labour claim or action in respect of which a final judgment is rendered by another court."

28. The above confirms that civil, commercial and labour claims which are related to the DIFC fall within the jurisdiction of the DIFC Courts by default. However, Article 5(A)(2) regarding the ability of parties to `opt in' to the jurisdiction of the DIFC Courts only refers to civil and commercial claims. As the term "labour" has not been included in Article 5(A)(2), it is concluded that labour or employment claims relating to employment outside the DIFC cannot be determined by the DIFC Courts.

Conclusion

29. In light of the aforementioned, I find that the Claimant's claim shall be dismissed.

30. Each party shall bear its own costs.

Issued by:
Nassir Al Nasser
SCT Judge & Registrar
Date of Issue: 3 February 2021
Re-issue date: 4 February 2021
At: 11am