



ADGM COURTS

محكمة سوق أبوظبي العالمي

28 March 2023 07:58 PM



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
EMPLOYMENT DIVISION
BETWEEN**

MOHAMMED R A KHALED
Claimant

and

3LEEM LTD
Defendant

JUDGMENT OF JUSTICE SIR MICHAEL BURTON GBE



Neutral Citation:	[2023] ADGMCFI 0007
Before:	Justice Sir Michael Burton GBE
Decision Date:	28 March 2023
Hearing Date:	13, 14 and 15 March 2023
Decision:	<ol style="list-style-type: none"> 1. Judgment be entered in favour of the Claimant in the sum of AED 73,000. 2. Interest shall accrue on the judgment sum at the rate of 5% per annum from the date of judgment until payment. 3. The Defendant pay the Claimant's fixed costs pursuant to paragraph 9.8 of Practice Direction 9 in the amount of USD 900. 4. The Defendant pay the total filing fees incurred by the Claimant in the amount of USD 397.40.
Date of Order:	28 March 2023
Catchwords:	Whether an employee of the company - Effect of salary certificates
Legislation Cited:	None
Cases cited:	None
Case Number:	ADGMCFI-2022-225
Parties and representation:	<p>Mr. Mohammed R A Khaled, the Claimant (self-represented)</p> <p>Ms. Alaa Abuyounis, authorised representative of the Defendant, for the Defendant</p>

JUDGMENT

1. This has been the hearing of a dispute between a divided couple, riven first by a marital dispute and then by the breakup of the Defendant company in which they were both involved. Various disputes and indeed proceedings between them elsewhere have resulted in victories both ways, and now they come before me in this Court in relation to an employment dispute. On its face, this has been a case fought by the Claimant husband, Mr Mohammed Khaled, against the Defendant, 3Leem Ltd now in the person of his (former) wife, its former CEO, Ms Alaa Abuyounis (“**Ms Abuyounis**”). In a disputed claim for a relatively small sum of AED 73,000, and a contested hearing of almost three full days, there has been a number of witnesses.
2. The Claimant has been supported by one witness, Ms Heba Siam. I shall refer to the Defendant in the course of this judgment, because it is the Defendant who is claimed to have been the Claimant's employer, but in reality, the defendant has been the wife, Ms Abuyounis. She has been supported by four witnesses, Ms Wafaa Mohamed, Ms Marwa Abouniaaj, Ms Huda Alhalabi and Mr Zaheer Nasser (“**Mr Nasser**”). Nevertheless, despite the number of witnesses, the issue is a very short one, namely whether the Claimant was employed by the Defendant. He claims AED 73,000 by way of a combination of unpaid salary, notice period and end of service gratuity. If he was employed by the Defendant at all, which is the issue in the case, the only issue as to quantum may be as to whether the compensation is compiled at AED 15,000 per month or AED 13,000 per month: the Defendant asserts no entitlement at all because the Claimant was not employed by it.
3. The one thing that is clear is that if there was any employment relationship, over and above the marital one, it was brought to an end by an email dated 4 January 2022, which, as translated, reads as follows:

“Subject: 3Leem operating stopped completely.

We hope you are well.

It was decided to stop work on the 3Leem project immediately.

The employees’ rights will be paid in full for the previous financial year to date within 60 days from now, after calculating the related arrears.

Thank you for your cooperation with us “.

This message was sent by Ms Abuyounis to 9 people, of whom it is common ground that 6 were employees. The other 3, Mr Ghanem Al Hajeri (“**Mr Al Hajeri**”), Mr Salem and the Claimant were described by Ms Abuyounis as being, together with her, the four founders of the Defendant. She explains their having received the email as because of their role, together with her, as founders and shareholders and not because they were employees. It does not seem as though Mr Al Hajeri, to whom I shall refer further, or Mr Salem were employees, but it seems they were both shareholders. The Claimant was, according to Ms Abuyounis, not sent the email because he was an employee, but because he too was a founder, and from September 2021 onwards the owner of seven shares in the Defendant (now transferred). He also carried out work for the Defendant, through a company of his called Dolphinuz.

4. The Claimant had no contract of employment with the Defendant (although of course, if he had, that would be likely to have resolved the issue, and its absence leaves the issue open). There are a number of what might be called equivocal factors, which I now list, which would be consistent with a case either that the Claimant was an employee, or that his only involvement with the Defendant company was his having been as a shareholder or founder, or simply husband of its CEO:
 - a. He held 2 access cards, giving him access to the Company's premises, in exactly the same form as those held by his wife, the CEO.
 - b. He received the “dismissal letter”, as did all the others.
 - c. He received payments from the Defendant, for which he has given credit in calculating the balance he claims by way of unpaid salary. Ms. Abuyounis explained that these payments



resulted from an instruction by her to the Defendant's accountant to pay to the Claimant half of her salary.

- d. He attended regularly at the Defendant's premises and worked with a number of the Defendant's employees, and on occasion supervised one or more of them. According to Ms Abuyounis, this was because he was carrying out work there on behalf of his own company, Dolphinuz, which does appear to have had talks in mid-2021 about a possible collaboration or joint venture with the Defendant. The witnesses called by both sides largely related to the role he had played when attending the Defendant's premises or carrying out work for the Defendant and with its employees.
 - e. His photograph was included among the four leading photographs, (the others being of Mr Al Hajeri, Ms Abuyounis and Mr Salem), the other 8 photos beneath being employees, under the heading "Our people" in draft literature, which I have seen.
 - f. He does not deny the fact that he was an employee of his own company, Dolphinuz, though it appears that at least one other employee of the Defendant, namely, Ms Farah Baker, may have also been employed by both the Defendant and Dolphinuz.
 - g. The fact that he was working with some of those who gave evidence before me on the premises of the Defendant, does not of itself, prove anything, either as to for whom he was working or with what status.
5. I turn then to what is, with one possible exception, the only unequivocal evidence as to the employment position of the Claimant, and that is two salary certificate certificates, both in similar form and the earlier of which is dated 23 February 2021. It reads as follows. "*This is to certify that [the Claimant identified by his Emirates ID number] is working with 3Leem Ltd company as a Marketing Consultant. He has been working with us since 01-12-2020, and his monthly basic salary is 13,000 AED. We are issuing this letter on the request of our employee and do not hold any liability on behalf of this letter or on behalf of this letter on our company.*" The letter is signed by Mr Al Hajeri and it has the stamp or seal of the Defendant. Ms Abuyounis asserts that this document is forged. But I was also told by Ms. Abuyounis that Mr Al Hajeri is a lawyer, that he is based in the United Arab Emirates, that he knows about the signature and that he is not prepared to come to court to give evidence, I find it difficult to see why if it is forged such a lawyer should not be prepared to come to Court, for which I gave an opportunity, in order to say so; but certainly in his absence, and without any other evidence of forgery, I do not see how I can reject the certificate on that basis. That seems to me to resolve the balance of proof on the issue of employment in favour of the Claimant, and the June 2021 salary certificate in the same terms and signed by Mr Al Hajeri records the salary as (by then) AED 15,000.
 6. The only other potentially unequivocal evidence which I heard was from a manifestly honest witness called Mr Nasser. He gave evidence of a jovial social occasion in July 2021, when Mr Nasser remembers telling the Claimant that he was lucky to work for his wife, and he recalls that the Claimant in response completely denied that he was an employee of the Defendant, asserting it seems, that he was only around in the office space to help his wife and insisting that he did not work for his wife and had many other projects. I have little doubt that this occurred more or less as described by Mr Nasser, but I am equally clear from my appreciation of the strong egotistic personality of the Claimant that it is perfectly possible that he would wish in such kind of social occasion to deny that he worked for his wife because it would not fit with the image of himself which he wanted to project.
 7. Ms Huda gave evidence on behalf of the Defendant that one of her tasks was to prepare a list of monthly payments for the Defendant's employees, and for engaged freelancers, for the accountant to complete the payment operations, and she stated that the Claimant's name was not present on either list, whereas all others whom she knew to be employees of the Defendant were. Given that there were from time to time payments made to Dolphinuz for services supplied and that there were payments made to the Claimant by arrangement with the Defendant's accountant, which I have described in paragraph 4(c) above, this does not seem to me to be inconsistent with the Claimant having been an employee.



8. Ms Abuyounis presented her evidence considerably more persuasively and coherently than the Claimant. However, on balance, I am simply unable to get away from the impact of the salary certificates, which were unchallenged by any evidence (as opposed to mere assertion) as to their unreliability or their fabrication. In consequence I find for the Claimant, and in the absence of any issue as to the calculation of the balance of unpaid salary, payment in lieu of notice or end of service gratuity as claimed, judgment for AED 73,000 must follow. Interest shall accrue on the judgment sum at the rate of 5% per annum from the date of judgment until payment.
9. As to costs, these are to follow the event with costs to be awarded to the Claimant. In the circumstances of this case, Practice Direction 9 provides for fixed costs of USD 900 for a claimant who is a litigant in person in an employment claim where judgment has been entered for the claimant after trial, together with filing fees of USD 397.40, and I award these amounts to the Claimant.



Issued by:

A blue ink signature of Linda Fitz-Alan.

Linda Fitz-Alan
Registrar, ADGM Courts
28 March 2023