



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

**In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar**

Neutral Citation: [2023] QIC (A) 36

**IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT**

[On appeal from [2023] QIC (F) 4]

Date: 31 July 2023

CASE NO: CTFIC0019/2021

FADI SABSABI

Claimant/Respondent

v

DEVISERS ADVISORY SERVICES LLC

Defendant/Applicant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Chelva Rajah SC

Justice Ali Malek KC

Order

1. Permission to appeal against the judgment of the First Instance Circuit is granted on ground 2 but refused on ground 1.
2. The appeal on ground 2 is allowed.
3. The parties are to make submissions as directed at paragraph 34 of this judgment.

Judgment

Introduction

1. In a written application made on 23 March 2023, the Applicant (**‘Devisers’**) sought permission to appeal from the judgment of the First Instance Circuit (Justices Her Honour Frances Kirkham CBE, George Arestis and Fritz Brand) in respect of its decision on costs given on 25 January 2023 ([2023] QIC (F) 4).

The proceedings brought by Mr Sabsabi

2. The dispute on costs arose following the decision of the First Instance Circuit on 12 April 2022 ([2022] QIC (F) 5), finding that the Respondent, Mr Sabsabi, was entitled to set aside an agreement dated 16 December 2019 made with Devisers, a company providing professional consulting services relating to visa applications on the grounds of misrepresentation as to the length of the residency requirements in the United Kingdom which were required if Mr Sabsabi and his family would be entitled to apply for United Kingdom citizenship.
3. The First Instance Circuit ordered the repayment of the sums paid by Mr Sabsabi. Devisers was also ordered to pay Mr Sabsabi the reasonable costs of the proceedings to be assessed by the Registrar if not agreed. Neither party was legally represented. As the First Instance Circuit observed at paragraph 6 of its judgment:

From the outset neither party has had legal representation. The pleadings, witness statements and other documents filed on both sides bear the hallmark of lack of legal training and experience.

4. An application for permission to appeal against that judgment was refused by this Court ([2022] QIC (A) 4).

The costs assessment

5. The parties did not agree the amount of the costs that should be paid to Mr Sabsabi. A hearing before Mr Registrar Grout followed. Devisers was represented by Eversheds Sutherland (International) LLP; Mr Sabsabi represented himself again. He claimed costs in the amount of QAR 110,000.00 which were the fees he had paid Mr Rashid Al-Saad of the Sharq Law Firm for advice and assistance in bringing the claim and a further QAR 10,000.00 in respect of the application for permission to appeal to this Court. Mr Registrar Grout determined in a costs assessment dated 27 October 2022 ([2022] QIC (C) 1) that Mr Sabsadi was entitled to claim the reasonable costs of seeking legal help and advice and held that QAR 70,000.00 was the reasonable amount of the sum. Costs were awarded to him in that sum.

The review by the First Instance Circuit of the costs assessment

6. Devisers sought a review of that costs assessment before the First Instance Circuit under article 33.5 of the Regulations and Procedural Rules (the '**Rules**') of this Court.
7. The First Instance Circuit on its review set aside the Order as to costs and determined that Mr Sabsabi was not entitled to be paid any costs of the litigation between him and Devisers. It also ordered Mr Sabsabi to pay QAR 10,000.00 in respect of Devisers' costs.
8. In determining whether costs should have been awarded to Mr Sabsabi, it held (at paragraph 18) that the matters that should have been taken in to account in exercising the discretion as to costs were (i) the fact Mr Sabsabi had not disclosed to anyone he had engaged lawyers, (ii) that Devisers was entitled to assume that Mr Sabsabi was unrepresented and his costs would be small (such as out of pocket expenses), and (iii) Devisers was unable appropriately to assess its costs risks of the litigation. Accordingly, as these matters had not been taken into account in the assessment of costs, the discretion as to the award of costs had been wrongly exercised. The only correct conclusion was that Devisers should not have been ordered to pay any costs. There is no appeal from that part of the judgment; it was plainly correct.

9. The First Instance Circuit's decision in respect of the costs of the application for review was set out in paragraph 25 of its judgment:

Devisers seeks an order that Mr Fadi Sabsabi pay QAR 45,000.00 in respect of the costs of this application. Devisers was represented by Eversheds Sutherland. No detail of the sum claimed has been provided. However, Eversheds Sutherland have filed two detailed submissions on behalf of Devisers. We conclude that Devisers is entitled to a contribution towards the costs it has incurred in respect of this application to set aside the assessment. We consider that a contribution by Mr Fadi Sabsabi of QAR 10,000.00 would be fair and so award that sum to Devisers.

The application for permission to appeal

10. Permission to appeal against the decision of the First Instance Circuit on costs is sought by Devisers on two grounds:

- i. The First Instance Court should have awarded Devisers the costs by way of legal fees it had incurred in the costs assessment before Mr Registrar Grout. The costs incurred were substantial – QAR 80,000.00. The First Instance Circuit failed to consider the application made by Devisers for those costs, failed to make any directions in respect of that part of the application, and did not deal with that part of the application in the judgment.
- ii. The First Instance Circuit should have afforded Devisers the opportunity to seek the recovery of the costs it had incurred in the review before the First Instance Circuit by allowing it to make submissions before determining what sum it ought to have specified. The costs incurred were QAR 45,000.00.

11. Mr Sabsabi, represented by Rashid Raja Al-Marri, responded to the application on 4 January 2023. He disputed the application.

12. We made an Order for directions on 18 May 2023, ordering Devisers to reply to Mr Sabsabi's response and giving Mr Sabsabi the opportunity to make a submission in answer to Devisers' response. We stated in the Order that we would consider whether an oral hearing was necessary and, if not, decide whether to grant permission on the basis of the submissions and, if we granted permission, whether to allow or dismiss the appeal.

13. Submissions were served in accordance with our Order. In his submission in answer, Mr Sabsabi made allegations that the application for permission was an abuse of process and quantified his costs in responding to the application for permission as QAR 35,648.00.
14. Having considered the detailed written submissions, we did not consider an oral hearing would assist us. We therefore determine the application as follows.

Ground 1: Should the First Instance Circuit have made an Order granting Devisers its costs incurred in the costs assessment before Mr Registrar Grout?

The review proceedings before the First instance Circuit

15. In its application to the First Instance Circuit for a review made on 21 November 2022, Devisers set out very cogent and detailed submissions explaining the reasons why the costs assessment was wrong. It set out the relief it sought as follows:

Disposal

9.1 The Applicant requests that the Court reviews the Cost Assessment and finds that the Registrar misdirected himself in the exercise of the burden of proof test, and in the application of the fundamental principles enshrined in the Hammad Shawabkeh case.

9.2 Accordingly, and in light of the above, the Applicant requests that the Court dismisses the Cost Assessment and orders that no costs be paid by the Applicant.

16. Mr Sabsabi answered this application on 19 December 2022. He rejected the submissions made in the application and submitted an application for additional legal fees incurred for the preparation of the answer to the application in the amount of QAR 45,200.00.
17. In its response made on 16 January 2023 to Mr Sabsabi's answer, Devisers set out detailed reasons why these were wrong and set out the relief it claimed:

10. Disposal

10.1 The Applicant respectfully requests that the Court reviews the Cost Assessment and finds that the Registrar misdirected itself in the exercise of the burden of proof test and in the application of the fundamental principles in Hamad Shawabkeh v Daman Health Insurance Qatar LLC [2017] QIC (C) (1).

10.2 Accordingly, and in light of the above, the Applicant requests that the Court dismisses the Cost Assessment and orders that no costs be paid by the Applicant.

10.3 The Applicant hereby claims its costs incurred in the application for the review of the Cost Assessment. Such costs will be quantified and substantiated at a later date, as directed.

10.4 The Applicant hereby reserves its rights to object to or further comment on the additional costs claimed by the Respondent should it be successful in dismissing the Application.

The submissions of Devisers to this Court

18. Although no express application had been made in respect of the costs it had incurred on the costs assessment before Mr Registrar Grout, Devisers submitted that the First Instance Circuit ought to have had regard to two submissions made to Mr Registrar Grout in the costs assessment from which it was clear that Devisers was claiming the costs it had incurred in the costs assessment. These submissions had been provided to the First Instance Circuit:

- i. At paragraph 6.2 of the response to the application for costs dated 27 June 2022, Devisers had submitted in its last paragraph under the heading “Disposal” as the second sub-paragraph:

[Devisers] seeks to recover the legal fees incurred in the preparation of all the submissions relating to the costs application submitted by the [Mr Sabsadi], which amount to QAR36,000 to today’s date. If required by the Court, [Devisers] is in a position to submit a subsequent and separate costs application for the recovery of the legal fees incurred by it relating to the [Mr Sabsadi]’s costs application, together with substantiating documentation.

- ii. At paragraph 3.1 of the response to the application for costs dated 8 August 2022, Devisers had submitted, again under the heading “Disposal”:

In the context of the above, [Devisers] requests that the court awards no costs to the Applicant in respect of the proceedings themselves and the subsequent cost assessment process. In addition, [Devisers] seeks to recover the legal fees incurred in the preparation of all the submissions relating to the costs application submitted by the Applicant, which amount to QAR42,000 to today’s date. If required by the Court, [Devisers] is in a position to submit a subsequent and separate costs application for the recovery of the legal fees incurred by it relating to [Mr Sabsadi]’s costs application, together with substantiating documentation.

19. Furthermore, Mr Registrar Grout had doubted his jurisdiction to make an order in favour of Devisers if he had decided the issue of costs in its favour. He had said at paragraph 30:

At various stages throughout the costs assessment procedure, the Defendant indicated that it sought to recover its own costs in respect of the various responses it had filed to the Claimant's costs submissions. In light of the conclusions I have reached, I do not consider that the Defendant is entitled to its costs of the costs submissions but, even if I am wrong about that, I am not persuaded that I have jurisdiction to make such an order. Any such application would have to be made to the First Instance Circuit of the Court.

20. For this further reason, the First Instance Circuit should have been aware of the application by Devisers on the appeal for the costs incurred in the costs assessment.

21. Devisers also submitted that the First Instance Circuit should have made directions in respect of its application for the costs incurred in the costs assessment and should have afforded it the opportunity to make submissions as to the costs incurred in the costs assessment before Mr Registrar Grout.

Our conclusion

22. In our judgement, there are no substantial ground for considering that on this ground of appeal the judgment of the First Instance Circuit was erroneous, nor is there a significant risk that the judgment would on this ground of appeal result in serious injustice, as set out in article 35.1 of the Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1.

23. As we have noted, no express application was made to the First Instance Circuit for the costs Devisers had incurred in the costs assessment to be paid by Mr Sabsabi. This was despite the fact that such an application had been made to Mr Registrar Grout and he had doubted at paragraph 30 of his judgment (which we have set out above) the jurisdiction to make such an Order. Each of the submissions made by Eversheds Sutherland (International) LLP on behalf of Devisers in the application for the review set out at its conclusion the “*Disposal*” it sought. In the submissions to the Registrar, Devisers had sought the costs incurred in the proceedings before him under that same heading – “*Disposal*”. In the application to the First Instance Circuit, the only application for costs under “*Disposal*” was for the costs before the First Instance Circuit; nothing was sought for the costs before the Registrar either in that paragraph

or elsewhere in the submission. Furthermore, no indication was given as to the amount of those costs or any document submitted in respect of the amount claimed; unlike the costs that were being sought before the First Instance Circuit, the amount sought was, by the time of the application to the First Instance Circuit, known and fixed; it should therefore have been set out in the application to the First Instance Circuit. In those circumstances the First Instance Circuit was entitled to assume that no application for the costs incurred before Mr Registrar Grout was being pursued; the fact that in the very carefully argued submissions and under the heading “*Disposal*” there were different applications in respect of costs were clear indications that the applications made for costs before Mr Registrar Grout were not being pursued. There was therefore no need for any directions. We do not therefore consider there is any basis for arguing that the decision was erroneous or there is a significant risk it would result in serious injustice.

24. In any event, this Court would be very reluctant to grant permission to appeal in respect of an application where a party has failed to make clear that such an application was being made to the First Instance Circuit.

Ground 2: Should the First Instance Circuit have invited submissions on the costs before it before making an Order as to costs?

25. Devisers, as we have set out, made a specific application for the costs it incurred in the application for review. This application was determined by the First Instance Circuit as we have set out.

26. The Rules provide at article 33 as follows:

Costs

33.1. The Court shall make such order as it thinks fit in relation to the parties' costs of the proceedings.

33.2. The general rule shall be that the unsuccessful party pays the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate.

33.3. In particular, in making any order as to costs the Court may take account of any reasonable settlement offers made by either party.

33.4. Where the Court has incurred the costs of an expert or assessor, or other costs in relation to the proceedings, it may make such order in relation to the payment of those costs as it thinks fit.

33.5. In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement as to the appropriate assessment, the necessary assessment will be made by the Registrar, subject to review if necessary by the Judge.

27. The Rules provide a very significant discretion to the Court. The Court can make an Order for costs to be assessed, if not agreed, in which case as provided for in article 33.5, the usual course is for that assessment to be made by the Registrar. The Court instead of making such an Order can also make an assessment of the costs itself on the basis of the information put before it.

28. In the present case the First Instance Circuit decided that it would make the assessment itself; in that decision it was plainly right, as the costs incurred in relation to the costs assessment by Mr Sabsabi had been very substantial and there was good reason to think that the further significant costs that would be incurred in any assessment would make the expenditure on legal costs in this litigation even more out of all proportion to the sum originally in issue.

29. However, if a court is to make an assessment itself, it is necessary to afford the parties an opportunity of making submissions, however brief, about the costs. It can do this by either at the conclusion of the oral or written submissions and before giving judgment or after giving judgment. If before judgment, the parties should each be asked to set out details of the costs incurred and to make any submissions on the other party's claim; if after judgment, then the successful party should be asked for details of the costs incurred and the unsuccessful party should be asked for brief submissions in response.

30. In its final submission made on 16 January 2023, Devisers, as we have set out above expressly asked for:

... its costs incurred in the application for the review of the Cost Assessment. Such costs will be quantified and substantiated at a later date, as directed.

31. It appears it was given no opportunity to quantify and substantiate its costs and to make submissions.

32. In our judgement, that opportunity should have been afforded in accordance with the principle we have set out.

33. In the circumstances, as justice requires that parties are afforded an opportunity to make appropriate representations, we consider we must grant permission on ground 2 and allow the appeal on that ground, deeply regrettable though it is that this litigation has generated so much by way of dispute on costs. Taking into account the overriding objective and with the aim reducing the further costs that will arise, we will therefore, instead of remitting the matter to the First Instance Circuit, determine ourselves (on the papers) the amount of costs that should have been awarded in respect of the review and whether we should make any Order as to the costs of the appeal and, if so, in what amount.

34. We therefore direct:

- i. Within 14 days from the date of this judgment, Devisers makes its submissions on (a) the amount it should have been awarded on costs incurred before the First Instance Circuit, and (b) whether we should make any Order as to the costs of the appeal and if so the amount. It must attach to the submissions the detailed invoices in respect of the claim.
- ii. Mr Sabsabi may within 14 days thereafter respond to the submissions made by Devisers.
- iii. The parties' submissions are limited to a maximum of two pages of A4 (Times New Roman font; size 12 or greater; and 1.5 sized-spaces between each line).

By the Court,



[signed]

Lord Thomas of Cwmgiedd, President

A signed copy of this Judgment has been filed with the Registry.

Representation

The Applicant/Defendant was represented by Eversheds Sutherland (International) LLP (Doha, Qatar)

The Respondent/Claimant was represented by the Rashed Raja Al-Marri Law Office (Doha, Qatar).