



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) 1

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
APPELLATE DIVISION

[On appeal from [2023] QIC (F) 38]

Date: 14 January 2024

CASE NO: CTFIC0033/2023

KLAAS BOUWMAN

Respondent

v

KOFLER GROUP MIDDLE EAST LLC

Applicant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Her Honour Frances Kirkham CBE

Justice Sir Bruce Robertson

Order

1. Permission to appeal refused.
2. The Applicant is to pay the Respondent the Respondent's costs incurred on the application for permission to appeal on an indemnity basis, to be assessed by the Registrar if not agreed.

Judgment

1. The Applicant ('**Kofler Group**') seeks permission by an application dated 19 October 2023 to appeal from the judgment of the First Instance Circuit (Justices Fritz Brand, Ali Malek KC and Yongjian Zhang) given under the Small Claims Track on 21 August 2023 in favour of the Respondent for (i) QAR 4,349, and (ii) €3,200 together with interest on both amounts from 22 May 2022 until payment ([2023] QIC (F) 38).

The factual background

2. On 1 April 2022, Mr Bouwman entered into a contract of employment with Kofler Group, a company engaged in event and hospitality services and based at the Qatar Financial Centre ('**QFC**'), under which Mr Bouwman was employed as Operations Director for a fixed term from 1 April 2022 to 31 January 2023. By clause 5.1 of the Employment Agreement, Mr Bouwman's basic salary was €12,000 per month. The terms of his employment were governed by the QFC Employment Regulations 2020 (the '**Regulations**'). He began his employment on 1 April 2022.
3. On 25 November 2022, after working for just under 8 months, Mr Bouwman became ill and informed Kofler Group that he would be taking sick leave. On 27 November 2022, he returned to his home in the Netherlands to receive medical treatment.
4. On 29 November 2022, the legal manager of Kofler Group sent an e-mail to Mr Bouwman informing him that he would need under the Regulations to provide a medical certificate from an approved Qatari medical institution registered in Qatar at least once every seven days during any period of absence due to illness. Medical Certificates were

supplied by Mr Bouwman from a medical practitioner based in the Netherlands, but not from a medical practitioner in Qatar.

5. Towards the end of December 2022, Mr Bouwman tried to make arrangements to restart his duties in January 2023 by sending WhatsApp messages. Kofler Group did not respond and did not pay him for December 2022 and January 2023.

The claims brought by Mr Bouwman and the judgment of the First Instance Circuit

6. Mr Bouwman brought four claims in June 2023:
 - i. A claim for his salary in December 2022 and January 2023 in the sum of €24,000.
 - ii. A claim for transport expenses in an amount of QAR 4,349.
 - iii. A claim for payment in lieu of annual leave in the sum of €4,800.
 - iv. A claim for compensation for non-provision of the agreed standard of accommodation in the sum of QAR16,000.
7. The Registrar assigned the claim to the Small Claims Track. The First Instance Circuit concluded it was appropriate to determine the claim on the basis of the written material. Neither party (each of which was legally represented) requested a hearing. The claim was determined on the basis of the documents and the pleadings which were put before the Court by the parties.
8. The First Instance Circuit dismissed his first and fourth claims. The claim for salary was dismissed as Mr Bouwman had not complied with the terms of his Employment Agreement as set out in the Regulations. In respect of the documents required when he was absent on account of illness as he had been in December 2022, he had not supplied a medical certificate from a medical practitioner based in Qatar; and in respect of January 2023, he had simply sent messages and failed to report for duty in Doha as required by the Regulations. The claim in respect of accommodation was dismissed on

the basis that Mr Bouwman had not provided the requisite evidence. There is no cross appeal by Mr Bouwman.

9. The First Instance Circuit gave judgment in favour of Mr Bouwman on his second and third claims:
 - i. Judgment on the claim for transport expenses was given on the basis that his entitlement under clause 5.3 of the Employment Agreement was not disputed and no proper answer to the claim had been put before the Court.
 - ii. Judgment for the payment in respect of annual leave was given in the sum of €3,200. It was not disputed he had worked for 8 months and taken only 5 days leave. Kofler Group contended that he was only entitled to 15 days annual leave under the terms of the Employment Agreement, but the First Instance Circuit held that this clause was overridden by article 33 of the Regulations which provided for minimum annual leave of 20 days. As he had only worked for 8 months, his entitlement should be prorated to 13 days, which after allowing for the 5 days he had taken, gave rise to an entitlement of €3,200.

The grounds of appeal

10. Kofler Group sought permission to appeal on three grounds:
 - i. Mr Bouwman was not entitled to any pay in respect of holiday not taken as he had in fact taken 14 days of annual leave between 19 July 2022 and 3 August 2022. Kofler Group relied on an email exchange between their Human Resources Manager and Mr Bouwman which it was said had been concealed by Mr Bouwman. The email exchange was exhibited to the application for permission to appeal.
 - ii. Mr Bouwman was not entitled to the amounts claimed for transportation as he has not complied with Kofler Group's internal procedures.
 - iii. There was no basis for awarding interest.

The approach of this Court to applications against judgments given in the Small Claims Track procedure

11. The sums in issue in this appeal are respectively (i) QAR 4,349 and (ii) €3,200, as Mr Bouwman's more substantial claim was dismissed by the First Instance Circuit and there is no application by way of cross appeal. In *Hadi Jaloul v Experts Credit Solutions Consultancy LLC* [2023] QIC (A) 13, a decision handed down shortly after the permission to appeal application in this appeal was brought, this Court stated at paragraphs 9 and 10:

.. the Court has had close regard to the provisions of article 35.1 of the Rules. This article provides that permission can only be given where, "there are substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that it will result in serious injustice".

10. Thus, in seeking permission to appeal, it is for the Applicant not only to show that there are grounds for considering that the decision is erroneous, but also that there is a significant risk that it will result in serious injustice. Where a claim is assigned to the Small Claim Track, this Court will have particular regard to the question of the significant risk of serious injustice.

12. As Kofler Group had not had an opportunity to consider that decision, we gave it the opportunity to make submissions on it. It did so and a short response was submitted on behalf of Mr Bouwman.
13. No credible argument was advanced that there was any significant risk that any serious injustice would result from the decision of the First Instance Circuit. Nor could it have been, given the sums in issue and the very just, clear and fair way in which the First Instance Circuit had tried the case and issued its decision. The application therefore must fail at the outset as no case could be made that there was any risk, let alone any significant risk, of serious injustice. It is therefore not necessary to consider the grounds of appeal any further.
14. It is of considerable importance that the objectives of fair and speedy justice of the Small Claims procedure implemented by Practice Direction No.1 of 2022 are not frustrated by unmeritorious applications for permission to appeal. Such an application may delay payment and put the respondent to further cost and expense. The Court has two relevant powers if unmeritorious applications for permission to appeal are brought:

- i. In *QFC Regulatory Authority v Horizon Crescent Wealth LLC* [2021] QIC (A) 5, this Court held that the QIC has power to impose a higher rate of interest when there has been a failure to observe its Order and Judgments: see paragraphs 16-19. Practice Direction No. 3 of 2021 set out further guidance. A failure to pay in circumstances where an application is made for permission to appeal against a judgment in a Small Claims Track where the Applicant fails to show there was any significant risk of serious injustice or where the application is otherwise wholly without merit, is a failure which entitles this Court to impose a higher rate of interest after the failure to pay in accordance with the Order of the First Instance Circuit.
- ii. Article 33.2 of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules (the ‘**Rules**’) provides:

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.

As we made clear in *Prime Financial Solutions v QFC Employment Standards Office* [2021] QIC (A) 3 at paragraph 6, the provisions are broad and straightforward and can be developed by the QIC as the interests of justice require. This Court may therefore, in applications made for permission to appeal against a judgment given under the Small Claims Track where the Applicant fails to show there was a significant risk of serious injustice or where the application is otherwise wholly without merit, request the Registrar to assess any costs incurred by the Respondent on the basis that the Respondent is to be fully indemnified in respect of all costs properly incurred in relation to the application.

Our decision on the application

15. The application for permission to appeal is accordingly refused.
16. The Kofler Group’s advocates totally misunderstood the appellate procedure of this Court, as is apparent from their application for permission:

The Appeal process entails the transfer of the entire case, including the factual background, defences and evidence, from the first instance to the Court of Appeal for a reassessment. This suggests that the Appeal is considered as a continuation of the initial first instance case, where the Appellant has an equal opportunity to present evidence as it did in the first instance.

As is clear from the Rules and from the Guidance on Appeals issued by this Court in April 2023 (now contained within the QFC Civil and Commercial Court User Guide at Chapter 21), this is not the law. The proceedings before this Court are not a continuation of the hearing or a rehearing; they are a review. As the Guidance made clear:

There are strict rules governing (i) the admission of evidence on appeal which was not called before the First Instance Circuit, and (ii) the making of arguments that were not made before the First Instance Circuit: the Appellate Division will not routinely give permission for (i) and (ii), above.

17. Although there is no basis on which it is necessary for us to consider the grounds advanced any further, we add that there is no merit whatsoever in the grounds on which the application was made.

- i. The matters relied on in relation to the claim for holiday pay were matters within the knowledge of Kofler Group. If there was assistance to be gained from those matters, the proper occasion to put those matters before the Court was before the First Instance Circuit. As this Court has made clear on many occasions, there are only very limited circumstances in which this court will consider new evidence; none arises in this case.
- ii. The alleged failure relied on in respect of the claim for travel expenses was, if it amounted to a defence, again a matter which should have been put before the First Instance Circuit. It was not. None of the circumstances in which this Court will consider new evidence arises in this case.

Our Order for indemnity costs

18. In all the circumstances, we conclude that this is an application that should never have been made. There was no justification for the application. It has put Mr Bouwman to considerable cost and expense. Kofler Group must therefore fully compensate Mr Bouwman for the expense to which he has been properly put in relation to the

application. We therefore Order that costs should be paid on a full indemnity basis, to be assessed by the Registrar if not agreed.

By the Court,



[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

The Claimant was represented by the Essa Al-Sulaiti Law Firm (Doha, Qatar).

The Defendant was represented by the Al Sulaiti Law Firm (Doha, Qatar).