

In the name of His Highness Sheikh Hamad bin Khalifa Al-Thani,
Emir of the State of Qatar

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
APPELLATE CIRCUIT

11 April 2011

CASE NO: 04/2010

CASE NO: 05/2010

IN THE MATTER OF THE WINDING UP OF AL MAL
BANK LLC

NAZIM OMARA

Applicant

AND

TAHA BABIKER

Applicant

v.

AL MAL BANK LLC

Respondent

JUDGMENT

Members of the Court:

President Lord Woolf

Justice Sir David Keene

Justice Lord Scott

ORDERS

THE COURT ORDERS THAT:

1. An application by Mr. Nazim Omara for permission to appeal an Order of 14 October 2010 of the QFC Civil and Commercial Court First Instance Circuit in Case 05/2010 Nazim Omara v Al Mal Bank LLC is dismissed.
2. An application by Mr. Taha Babiker for permission to appeal a Judgment of 1 December 2010 of the QFC Civil and Commercial Court First Instance Circuit in Case 04/2010 Taha Babiker v Al Mal Bank LLC is dismissed.
3. Mr. Omara pay the Liquidators indemnity costs, to be assessed by the Registrar if not agreed between the parties. This Order does not affect any cost orders of the QFC Civil and Commercial Court First Instance Circuit.
4. Mr. Babiker pay the Liquidators normal costs, to be assessed by the Registrar if not agreed between the parties. This Order does not affect any cost orders of the QFC Civil and Commercial Court First Instance Circuit.

JUDGMENT

THE COURT:

1. This is a Judgment in respect of applications for permission to appeal of Mr. Nazim Omara and Mr. Taha Babiker. The applications are in relation to the decision of the First Instance Circuit of this Court (Justice Dohmann, Justice Lord Cullen and Justice Sackville) of 14 October 2010 making a determination that:
 - a) The Babiker Contract was executed before Mr. Babiker's employment was terminated on 17 November 2009;
 - b) The Babiker Contract is invalid, having been executed by Mr. Omara without authority to do so.
2. On 6 June 2010, the Court had ordered that the Al Mal Bank LLC ("Bank"), be wound up pursuant to Article 77 of the *QFC Insolvency Regulations 2005* and that Liquidators be appointed. Having been appointed the Liquidators had invited the Court to determine the questions which the Court answered as set out above.
3. The Liquidators' case against Mr. Omara was that he had fraudulently created, after the date of that dismissal, the contracts on which he and Mr. Babiker relied in the proceedings.

4. On the last day of the ten day hearing counsel appearing for Mr. Omara applied for leave to withdraw Mr. Omara's claim and accepted the consequence of this was that Mr. Omara's claims against the Bank would be dismissed.
5. Although a detailed application was submitted to this Court on behalf of Mr. Omara, Mr. Omara did not appear on the first day of the hearing of this application (10 April 2010). Nor did the advocates who had been appearing on his behalf attend, although they had been notified of the hearing. The case continued on the following day and again they did not appear, although further notice of the hearing had been given to the advocates. Mr. Babiker was however represented by Mr. Saati and Miss Al-Mutawa at the hearing and the Liquidators were represented by Mr. Michael Swainston QC and Mr. Edward Harrison.
6. In his careful and clear submission, Mr. Saati's initial argument was that the requirement contained in the *Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules*, issued and in force from 15 December 2010 ("the *Rules and Regulations*"), were *ultra vires* insofar as they required permission to appeal. The *Qatar Financial Centre Law* No 7 of 2005, as amended by the *QFC Law* No 2 of 2009, did not, it was submitted, require permission to appeal and it was wrong to impose, by subordinate *Rules and Regulations*, on the right of appeal given by the 2005 legislation, the additional requirement of permission to appeal.
7. Paragraph 11 of Schedule 6 of the *QFC Law* of 2005, as amended, states:

“The decision of the First Instance Circuit is enforceable unless the Appellate Circuit decides otherwise, on a motion from the appellant party and for reasons the Appellate Circuit considers reasonable.”

8. Article 35 of the *Rules and Regulations* provides:

“35.1 A first instance judgment or decision of the Court will usually be final. However, if 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, then a Court consisting of three Judges (whether the first instance Court or a differently constituted Court) can give permission for an appeal to the Appellate Division of the Court. Any decision to refuse permission to appeal is final.”

9. A requirement for permission to appeal can justifiably be regarded as an impediment on a right of appeal, as Mr. Saati contends. The requirement can, however, generally be justified in contemporary litigation as contributing to the efficient economic and effective resolution of litigation. In more recent times many legal systems have found that appeals without any merit prevent litigants being able to obtain justice and causes them additional expense and inconvenience. The requirement of permission can help to reduce this inconvenience to a minimum. It is one of the objectives of the QFC Civil and Commercial Court to provide procedures which accord with best international practice. It is to assist in achieving this that the requirement for permission was imposed by the *Rules and Regulations*.

10. The *QFC Law 2005* as amended contains the powers to make the *Rules and Regulations*, Article 15 of Schedule 6 of the *QFC Law 2005* as amended provides that:

“Once The chairman and The members are appointed, The Civil and Commercial Court shall lay down its operational rulebook and proceedings in accordance with the provisions of this Law, the fundamental litigation principles and international best practices. Such rulebook and proceedings shall not be in effect until approved by The Council of Ministers.”

See also Article 9 of QFC Law 2005.

11. The *Rules and Regulations* were approved by the Council of Ministers. We are of the opinion that the requirement for permission to appeal clearly falls within the language and spirit of Article 15 of Schedule 6 and Article 9 of *QFC Law 2005*, and the requirement for permission is appropriately included in the *Rules and Regulations*. Therefore, we reject Mr. Saati’s submissions as to the invalidity of requirement for permission. We do however emphasize that the requirement of the permission should not be used to cause a litigant any material injustice. If this Court considers there is an arguable case it will usually readily grant permission to appeal.

12. In this case, there was an issue as to whether the applications had been made within the prescribed time. It is not necessary for us to consider the arguments as to this because if these applications were not made strictly within the statutory time

limit of 60 days we are prepared to extend time so far as necessary. In coming to this conclusion we do not question the argument on behalf of the Liquidators that in proceedings involving liquidation it is especially important to avoid unnecessary delay.

13. Mr. Saati argued that it would be wrong in this case for the Liquidators to rely on actions of his client which were (not surprisingly) not relied upon by his employers at the time of his dismissal because they were not known. It is not necessary to consider the authorities on the subject. On the findings of the Court below, it was impossible for Mr. Babiker to succeed on his case of wrongful dismissal as that depended on him having been granted a valid extended contract. While the Court on the balance of probabilities concluded that his contract was executed before his contract was terminated on 17 November 2009, this finding does not assist him because the Court also found that the contract was invalid having been executed by Mr. Omara without authority. Furthermore, there is no argument which Mr. Saati has advanced which undermines these findings. As the Court made clear Mr. Babiker, at all material times, knew of the existence of the undisclosed accounts and knew and appreciated that payments were being made by Mr. Omara improperly. This was a conspiracy in which both he and Mr. Omara were engaged.

14. Despite all Mr. Saati's arguments, Mr. Babiker totally fails to establish that the decision of the Court below was wrong. Accordingly he has suffered no injustice and the appeal must be dismissed.

15. Although Mr. Omara has failed to support his application to seek permission to appeal, we have examined carefully the extensive written grounds of objection to the Judgment filed on his behalf, and we have come to the conclusion that the appeal is without merit and could not succeed. None of the matters on which he relies would justify granting him permission to appeal. We therefore dismiss his application for this reason as well as for his failure to support his appeal application.

Attendance of Mr. Omara's advocate at the QFC Civil and Commercial Court on 10 or 11 April 2011

16. We add to this Judgment that Mr. Omara's advocate has replied to the Court with a letter dated yesterday's date, 10 April 2011, in response to a further communication to the advocate seeking confirmation of his attendance at yesterday's hearing. The advocate gave what purported to be excuses for his non-attendance here yesterday. He also attached to the letter a small bundle of documents which we have examined insofar as they are in English.

17. We are satisfied that the failure of the advocate concerned to keep in contact with the Court and to be present yesterday and today are unjustified. Advocates who represent parties to proceedings brought before the Court are required to assist the Court to achieve justice. That duty means that it is their responsibility to ensure that they attend the Court at all hearings in which their clients cases are being considered and make sure the Court can communicate with them without undue difficulty.

18. This did not happen in the case of Mr. Omara but, as we have indicated in our Judgment, fortunately this has not caused his client Mr. Omara any injustice because it was not possible for his application to succeed.

Costs

19. We have considered the arguments by the parties as to costs. We are grateful for those arguments and the conclusion to which we have come is that the following orders should be made. In the case of the applicant Mr. Omara, an indemnity order for costs. In the case of Mr. Babiker, a normal order for costs. In both cases the orders which we have made do not affect the costs in the QFC Civil and Commercial Court First Instance Circuit.

20. Mr. Saati advanced a submission that the costs should be in accord with the costs which would be ordered to be paid in the Qatari domestic courts. This Court is a separate, new institution which is also a Qatari Court but a Court which is different from the Qatari domestic courts.

21. As to the principles upon which this Court should act, we have to act in accordance with the Law that established this Court. As we have stated earlier in this Judgment, the Law is primarily contained in *QFC Law No. 7 of 2005 as amended by the QFC Law No 2 of 2009*. This is supplemented by Procedural Rules and Regulations of the QFC Civil and Commercial Court (*"Rules and Regulations"*). Those *Rules and Regulations* deal specifically with the question of costs in Article 33. Article 33.1 provides:

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

22. Article 33.5 provides that:

"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."

23. The orders which we have indicated we are making are orders for the costs to be assessed if not agreed, in accordance with Article 33.5.

24. In our view, the legislation to which I have just referred creates a distinct code that differs from the Qatari approach in the domestic courts but accords with what litigants using this Court would expect from a specialist court of our nature.

25. We draw attention to the fact that the legislation which was passed, to which we have referred, was approved by the Shura Council and the Council of Ministers. Those are the matters with which we have to deal in relation to costs.

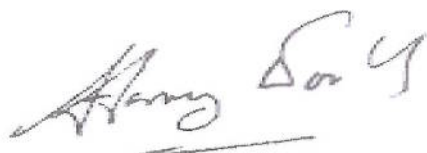
Representation:

For Al Mal Bank LLC: Mr. Michael Swainston QC and Mr. Edward Harrison (Brick Court Chambers, London, UK)

For Mr. Taha Babiker: Ms. Muna Al-Mutawa and Mr. Hassan Saati (Law Office of Muna Yousef Al-Mutawa, Doha, Qatar)

For Mr. Nazim Omara: Mr. Mohammed Al Mohanadi (Mohanadi & Partners, Doha, Qatar) absent at the hearing

Signed by: President Lord Woolf, QFC Civil and Commercial Court, Appellate Circuit:

A handwritten signature in black ink, appearing to read "Lord Woolf", with a horizontal line underneath.