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

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

APPELLATE DIVISION

15 January 2019

CASE No: 16/2018
(on appeal from Case No 07/2017)

OUSSAMA ASSAAD

Applicant

v

NOMURA INTERNATIONAL PLC

Respondent

JUDGMENT

Members of the Court:

Lord Thomas of Cwmgiedd, President
Justice Hassan Al Sayed
Justice William Blair

ORDER

1. The Application seeking Permission to Appeal is refused; and
2. Costs reserved.

JUDGMENT

1. In a written application made on 31 October 2018, the Applicant seeks permission to appeal from the judgment of the court of the First Instance Circuit (Justice Robertson, Justice Kirkham, Justice Hamilton) given on 10 September 2018. In that judgment the court dismissed the claim of the Applicant for payment of salary and other compensation in relation to his employment by the Respondent. The Respondent in its submission dated 22 November 2018 contends we should refuse permission.

2. The claim made by the Applicant was based on what he said was an agreement made by the Respondent in May 2012 to employ him in Qatar at an annual salary of $181,319 a year in addition to his existing salary for his employment in Dubai which had commenced in 2008 under a contract made in 2008/9. The defence of the Respondent was that no separate contract had been agreed in respect of Qatar; although the Applicant did from time to time travel to Qatar, this had not resulted in a contract of employment separate from that made in 2008/9. The Respondent contended that the May 2012 letter was not a genuine contract.

3. The Applicant had also brought a claim in respect of his employment in Dubai, but that claim had been struck out by the court in a judgment dated 13 May 2018 on the grounds that the court lacked jurisdiction. That judgment was not the subject of any application to appeal.

4. The Applicant seeks permission to appeal the judgment of 10 September 2018 on the basis that:

a. The court did not understand the arguments submitted to the court due to mistranslation and errors in translation particularly in the documents listed in the application for permission to appeal.

b. The court had come to the wrong conclusion principally because (1) it had made its decision based on the 2008/9 contract, (2) it had failed to reject the evidence of Mr Ghafour and (3) it had failed to take into account the experience certificate.

5. We can see no reasonable prospect of success in establishing that

a. There were any mistranslations or errors or that the court did not fully understand and consider each of the arguments made by the Applicant.

b. The court made its decision on the basis of the 2008/9 contract, that it failed properly to assess the credibility of Mr Ghafour or that it failed to have proper regard to the experience certificate.

6. The issue in the case was whether the Applicant had established that there was a separate and additional contract made in May 2012 for his employment in Qatar. The court found Mr Ghafour, as a senior officer of the Respondent in Dubai, had signed a letter in Arabic dated 15 May 2012 which confirmed the separate employment which the Applicant had said was made in respect of Qatar and the salary he claimed was agreed. However, the court, after hearing evidence, an extensive review of the documents and after consideration of each of the issues raised by the Applicant in his application to us, held that the Applicant had had not established the existence of a separate and additional contract for employment in Qatar.

7. There was ample evidence on which the court was entitled to reach that conclusion. There is also no proper basis for contending that it based its decision on the 2008/9 contract, or that it did not properly consider the credibility of Mr Ghafour or that it failed to take into account the experience certificate or any of the other points made by the Applicant:

a. Although the May 2012 letter was signed by Mr Ghafour and although Mr Ghafour (who had provided a written statement) did not give oral evidence, the court found, as was accepted, that he did not speak or read Arabic. The court was entitled to have serious doubts as to whether any explanation was given to him as to the serious nature of that which he was being asked to sign.

b. The Applicant said he had retained the original of the letter and left a copy in the Respondent's office. No copy of the letter could be found in the possession of the Respondent, as attested by the unchallenged evidence of one of the Respondent's solicitors.

c. The Respondent's Human Relations Department were never involved in or consulted about or agreed to the matters set out in the May 2012 letter; nor was that Department involved in the discussions which the Applicant claimed he had had with other officers of the Respondent. This was contrary to the Respondent's internal procedures. The 2008/9 contract with the Respondent (which the Applicant had countersigned) had specified that no variation in the terms of the contract would be permitted unless authorised in writing by the Human Relations Department. The May 2012 letter was also totally inconsistent with the Respondent's proposal in December 2015 for a new contract for the Applicant (though he was dismissed before he saw the terms of the proposal).

d. No payment whatsoever was made to the Applicant under the terms of the May 2012 letter whilst the Applicant remained in the employ of the Respondent prior to his dismissal in January 2016 by the Respondent for other reasons. No documents could be found that evidenced any request by the Applicant for payment under the May 2012 letter. Although the Applicant contended he had agitated for action and been given an advance, the court was entitled to find it was unbelievable that the Applicant would have left the matter unresolved for so many years.

e. The Applicant was only in Qatar a few days a year; there was no evidence that provided any rational basis to explain the doubling of his salary which would have resulted if there had been the agreement in May 2012.

f. The Applicant had failed, despite the direction of the court, to provide a detailed written statement to explain the circumstances in which he claimed the agreement had been made in May 2012. The court was accordingly entitled to give little weight to the oral evidence in which the Applicant had explained the circumstances in which he claimed the May 2012 letter was signed. It was also entitled to find that it did not accept the evidence of the Applicant that he had explained the May 2012 letter to Mr Ghafour, or at least in sufficient terms that he could understand it.

g. The court found that the applicant had not explained to it the certificate of experience; the Applicant has had his opportunity to do this.

8. The application for permission to appeal is accordingly refused. The court's decision on costs is reserved pending the determination on the application for costs which is currently before the trial court.

By the Court,

Lord Thomas of Cwmgiedd, President

Representation

The Application seeking Permission to Appeal was considered on the papers.

The Applicant represented himself.

The Respondent was represented by Allen & Overy LLP.

DIGITALLY SIGNED AND VERIFIED
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