



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

COURT OF FIRST INSTANCE
EMPLOYMENT DIVISION

BETWEEN

TETYANA GLUKHOVA
CLAIMANT

AND

ESPOIR FLOWER BOUTIQUE LTD
DEFENDANT

JUDGMENT OF JUSTICE SIR MICHAEL BURTON



Neutral Citation:	[2019] ADGMCFI 0001
Before:	Justice Sir Michael Burton
Decision Date:	25 February 2019
Decision:	<ol style="list-style-type: none">1. The claim of AED3,667 for alleged unused leave in Box 5 of the Particulars of Claim is struck out.2. The claim of AED60,000 for unjust and wrongful termination in Box 6 of the Particulars of Claim is limited to AED20,000, which is substituted for the sum presently claimed of AED60,000, which is to that extent struck out.3. An additional claim for 2 weeks' basic wage at the alleged rate of AED 10,000 per month for alleged failure to give reasons may be added to the Prayer.4. The total amount claimed in Box 7 of the Particulars of Claim is reduced by the above amounts.5. The Court will consider the question of costs in respect of this application, including quantum, on paper.
Hearing Date(s):	No hearing
Date of Orders:	25 February 2019
Catchwords:	Employment. Wrongful dismissal.
Legislation Cited:	Federal Law No 8 of 1980 on Regulation of Labour Relations
Case Number:	ADGMCFI-2018-011
Parties and Representation:	STA Law Firm for the Claimant SOL International Ltd for the Defendant

JUDGMENT

1. The Court makes the following Judgment in respect of the Defendant's strike out application notified to the Court on 6 January 2019 after consideration of the parties' submissions filed on 14, 20 and 22 January 2019 and 10 and 12 February 2019.

Compensation for wrongful dismissal

2. The proposed medical evidence does not seem to be admissible, and appears to be inconsistent with the legal position apparently accepted by both parties, as set out in paragraph 4.6 of the



Defendant's Strike Out Submissions, namely by reference to s 61 of the ADGM Employment Regulations, or at common law.

3. The additional matters set out in paragraph 11 of the Claimant's Reply to those Submissions are not pleaded and would in any event appear to be wholly inconsistent with the ordinary principle of recovery for compensation for wrongful dismissal, either under those Regulations or at common law.
4. The Court therefore concludes that the matters referred to in paragraphs 2 and 3 above are not recoverable by the Claimant at common law or pursuant to Federal Law No 8 of 1980 on Regulation of Labour Relations ("UAE Labour Law").
5. The Claimant's claim is not for constructive dismissal but for wrongful dismissal by the Defendant by its termination email of 9 July 2018. Constructive dismissal is therefore irrelevant, and in any event irrelevant to the question of compensation.
6. Since the Court cannot resolve interlocutorily the issue of whether the original contract was lawfully terminated, the Claimant can claim compensation for termination of it as at July 2018 on the basis of a rate of AED10000, but limited, pursuant to Article 115 of the UAE Labour Law, to a period of 3 months. The Claimant's claim for compensation in respect of such termination is thus limited to AED30,000, inclusive of the sum of AED10,000 claimed in Box 2. The claim in Box 6 must therefore be limited to AED20,000, which must be substituted for the sum presently claimed of AED60,000, which is to that extent struck out.

Reasons for Dismissal

7. In the light of the Claimant's submissions by reference to Article 9 (4) (b) of the ADGM Employment Regulations 2015 (Compensation Awards and Limits) Rules 2016, the claim in respect of written reasons cannot be struck out. It is noted that no sum is included in respect of this claim in any Box, nor in the Prayer, but since it is made in the pleading an additional claim for 2 weeks basic wage at the alleged rate of AED10000 per month may be added to the Prayer.

Alleged Unused Leave

8. The Claimant relies on the words of (I assume) Mr Milos, in Exhibit 2 to her Reply Submissions, that there were eleven days "I think" left. However, the Defendant has now done its research and has produced documents signed by the Claimant, confirming that there are no days untaken (indeed that there is a balance the other way).
9. The Court notes that the Claimant has made no response to this issue in her latest submissions. The claim in Box 5 is therefore struck out.



Other matters

10. No application is made to strike out Box 3, to which paragraph 9 of the Claimant's Submissions is addressed. As for the 11 items, this is not the subject of any counterclaim such as to trigger any right to set off as alleged or at all.

Conclusion

11. Box 7 must be reduced in the light of this Judgment, by the AED3,667 struck out in Box 5 and the AED40,000 struck out, by way of reduction of the AED60,000 pleaded, from paragraph 6, subject to the addition of the sum to be added pursuant to paragraph 7 above. The Court will consider the question of costs in respect of this application, including quantum, on paper.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
25 February 2019