

JUDGMENT SUMMARY

Neutral Citation	[2019] ADGMCFI 0006
Case Number	ADGMCFI-2019-007
Name of Case	A3 v B3
Judge	Justice Sir Andrew Smith
Date Issued	27 August 2019
Catchwords	Costs. Application for costs on an indemnity basis. Summary assessment.
Cases Cited	–
Legislation and Authorities Cited	ADGM Court Procedure Rules 2016 – Rules 195, 197 and 200 UK Civil Procedure Rules 1998 – Rule 44.3(2) Practice Direction 9 – Annexure 2
Executive Summary	This judgment addressed the Claimant's application for costs following a successful declaration regarding the validity of an arbitration agreement. The Court refused the Claimant's request for costs to be assessed on an indemnity basis, instead ordering them to be assessed on a standard basis and awarding costs in the sum of US\$44,234.06 to the Claimant. The judgment outlined the reasons for awarding costs in US Dollars and the rationale for assessing costs on a standard rather than an indemnity basis, including a summary assessment of the costs incurred.
Overall Summary	Background This Abu Dhabi Global Market (“ ADGM ”) Court of First Instance (Commercial & Civil Division) concerns a decision on costs following an earlier ruling. By an Order dated 4 July 2019, the Court had declared that a valid and binding arbitration agreement existed under the International Chamber of Commerce (“ ICC ”) Rules. This judgment deals with the Claimant's application for costs related to those proceedings. The Defendant did not participate in the proceedings.

	Analysis and Conclusion The Court has the power to make cost Orders as it considers just under Rule 195 of the ADGM Court Procedure Rules 2016. The general approach, reflecting the practice of Courts in England and Wales, is to award costs in favour of the successful party against the unsuccessful party, which the Court considered just in this case as the Claimant was successful. A preliminary question was whether to award costs in US Dollars or UAE Dirhams. Although Practice Direction 9 provided indicative hourly rates in UAE Dirhams, it does not mandate that costs <i>must</i> be awarded in UAE Dirhams, and it also sets out amounts in US Dollars for specified circumstances. Given that the Claimant was charged legal fees and incurred disbursements in US Dollars, and the underlying matter was ancillary to an ICC arbitration where fees are in US Dollars, the Court held that the Claimant was entitled to costs in US Dollars. The Claimant sought an Order for costs to be assessed on the indemnity basis, arguing proper conduct on their part and the Defendant's failure to participate. However, the Court refused to make such an Order. Costs are generally not awarded on the indemnity basis unless there is misconduct or unreasonable conduct of such a high degree that it justifies departing from the normal basis of assessment. The Court found no sufficient basis to criticise the Defendant's conduct to this degree. Therefore, costs were ordered to be assessed on the standard basis. The Court decided to make a summary assessment of costs, determining that it had sufficient information, and a detailed assessment would be disproportionate. Assessing costs on the standard basis requires considering proportionality to the matters in issue and whether costs were reasonably incurred and reasonable in amount. The underlying dispute concerned the termination of a five-year commercial property lease, with a claim value of over US\$900,000. The specific issue in Court (the validity of the arbitration agreement) was considered multi-faceted and required examining different legal principles. In view of the importance of the underlying dispute and the complexity of the validity issue, the costs sought were considered proportionate to the matters in issue. The Court scrutinised the detailed bill and found no basis to conclude costs were unreasonably incurred, including time spent on a witness statement which, while more than expected, was deemed within the range of what was reasonable. Hourly rates were also considered reasonable, noting that work was done by lawyers of appropriate seniority and experience. Although the hourly rate for Mr Ben Mellet (AED 525) was stated to be "<i>more than the guideline amount for a trainee of up to five years</i>", the nature of the work he did was found to justify the rate. Having assessed the amount claimed on the standard basis, the Court awarded the Claimant costs in the sum of US\$44,234.06.
--	--