

JUDGMENT SUMMARY

Neutral Citation	[2022] ADGMCFI 0010
Case Number	ADGMCFI-2022-017
Name of Case	Moustafa Ashraf Abdelghani Mohammed Shaaban v. AUMET LTD
Judge	Justice Sir Michael Burton GBE
Date Issued	22 November 2022
Catchwords	Second application to set aside judgment – Non-compliance with Orders – Effect of Article 28 of Federal Law
Cases Cited	–
Legislation and Authorities Cited	Federal Law No 35 of 1992 as amended - Article 28
Executive Summary	This judgment considered multiple applications. The Court dismissed the Defendant's repeated attempts to set aside default judgments totalling USD 76,631.97 due to their non-compliance and belated arguments. The Defendant's proposed counterclaim for fraud was stayed, as related criminal proceedings were initiated after the civil judgments. The Court assessed the value of the Claimant's shares, awarding USD 36,900.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns applications by the Defendant, AUMET LTD, in a case brought by the Claimant, Mr. Moustafa Shaaban. The Claimant's original claim arose from his dismissal by the Defendant, with his employment terminated on 31 December 2021.</p> <p>The judgment addresses: (i) an assessment of damages for previous judgments in favour of the Claimant; (ii) the Defendant's application to set aside the default judgment order dated 9 February 2022, awarding the Claimant US\$76,631.97 plus costs, in relation to his dismissal; and (iii) the Defendant's permission application to bring a counterclaim.</p>

	<p>On 5 April 2022, the Court issued a judgment concerning the Defendant's application to set aside the 9 February 2022 default judgment order. The Defendant claimed their employees did not notice the initial email giving notice of the proceedings. The Defendant also alleged fraud by the Claimant, discovered posthumously, which they argued would justify his dismissal. The Court conditionally set aside the judgment, requiring the Defendant to pay US\$76,631.97 into court by 26 April 2022, noting the slim merits of the defence and the belated and unparticularised nature of the fraud claim. The Defendant did not appeal this judgment and failed to make the required payment into court.</p> <p>Due to the Defendant's continued default, on 18 May 2022, judgment was entered for damages to be assessed regarding the Claimant's "<i>Shares Claim</i>". Further, the Defendant failed to file a witness statement by 23 June 2022, resulting in an "<i>unless</i>" order on 29 June 2022, and an order debarring the Defendant from filing evidence if non-compliance continued. By 14 July 2022, with no evidence from the Defendant, the assessment of the Shares Claim was ordered to proceed based solely on the Claimant's evidence. The Defendant later attempted to submit a witness statement on 28 July 2022 but was ordered to make an application with full reasons to set aside the debarring orders.</p> <p>Analysis</p> <p>The Court first addressed the Defendant's renewed application to set aside the 9 February 2022 judgment. This application, made on 3 August 2022, again alleged fraud by the Claimant justifying dismissal. However, the Court highlighted that an application on "<i>exactly that basis</i>" had already been heard and decided by the 5 April 2022 order, which was unappealed and thus "<i>unchallengeable</i>" save in exceptional circumstances. The Court found no new information, noting that the alleged fraud was discovered and known about on 23 December 2021, contrary to earlier implications that it was recently discovered. Furthermore, the Defendant had not complied with the unappealed condition of paying money into court. The Court dismissed this second application, stating there was "<i>no basis whatever for setting aside the judgment</i>" given the Defendant's "<i>continued default</i>". The Defendant's excuse that their lawyers advised them to pursue the fraud in the onshore Abu Dhabi courts was rejected, as it did not justify ignoring the ADGM Court's orders.</p> <p>Next, the Court considered the Defendant's application to bring a counterclaim in these proceedings for the same alleged fraud being adjudicated in the Abu Dhabi Courts. The Court confirmed that a default judgment does not prevent a counterclaim based on <i>res judicata</i>. However, the Court referenced Article 28 of Federal Law No 35 of 1992 (as amended), which mandates that a civil case must be stayed if a criminal action was filed "<i>prior or during the examination of the civil case</i>". The Court determined that the criminal action (2022/871) was filed on 22 August 2022, after the ADGM judgments of 9 February 2022 and 18 May 2022 were entered. Therefore, the judgments were not affected by Article 28, but the proposed counterclaim "<i>must be stayed</i>" so long as the criminal proceedings continue. The Court acknowledged the possibility of</p>
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	<p>lifting the stay if the onshore criminal proceedings were withdrawn and any related funds transferred to the ADGM.</p> <p>Finally, the Court proceeded to assess damages for the Shares Claim, as these judgments predated the filing of the criminal case. The assessment involved valuing 12,300 shares in AUMET Inc (4,800 original shares plus 7,500 shares from the first year of vesting). While the Claimant suggested a value of US\$11.2 per share based on various documents, the Court found this insufficient for a <i>"real basis for valuation"</i>. The most <i>"persuasive"</i> evidence came from the Defendant's director, Mr. Yahya Aqel, who, in August of the same year, provided evidence to the Abu Dhabi authorities stating the market value of the shares was \$7 per share. Taking into account that the shares might not be easily transferable, the Court valued them at \$3 per share, leading to an awarded sum of \$36,900 (12,300 x \$3). No interest was awarded, as the valuation was made as of the judgment date.</p> <p>Conclusion</p> <p>The Court denied the Defendant's applications to set aside previous default judgments and ordered the payment of \$36,900 to the Claimant by way of assessment for the Shares Claim judgment. The Defendant's application to file a counterclaim for alleged fraud was stayed due to ongoing criminal proceedings in the onshore Abu Dhabi courts, as dictated by Federal Law.</p>
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.