

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0016
Case Number	ADGMCFI-2020-020
Name of Case	NMC Healthcare LTD and associated companies
Judge	Justice Kenneth Hayne
Date Issued	26 June 2023
Catchwords	Contempt. Purging contempt. Penalty in consequence of contempt findings. Whether contemnors have remedied harm. Costs on standard or indemnity basis. Factors bearing on sanction of fine or reference to Attorney General.
Cases Cited	<p>CJ v Flintshire County Council [2010] EWCA Civ 393 [6]</p> <p>Johnson v Grant 1923 SC 789, 791</p> <p>Templeton Insurance Ltd v Anthony Thomas, Harbinder Singh Panesar [2013] EWCA Civ 35, [42]</p> <p>Trafigura Pte Ltd v Emirates General Petroleum Corp (EMARAT) [2010] EWHC 3007 (Comm); Compania Sud</p> <p>Americana de Vapores SA v Hin_Pro Logistics Ltd [2013] EWHC 987 (Comm) [2022] DIFC ARB 017 and 021/2021</p> <p>Gulf Wings FZE v A A and K Trading Ltd [2022] DIFC CA 014</p>
Legislation and Authorities Cited	<p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 96</p> <p>Commercial Licensing Regulations 2015 (Fines) Rules – Rule 2</p> <p>ADGM Court Procedure Rules 2016 – Rules 195 to 200</p> <p>Insolvency Regulations 2015 (now the Insolvency Regulations 2022)</p>
Executive Summary	This judgment considered and found Noor Capital PSC and Mr Abdul Jabbar Al-Sayegh in contempt for violating an anti-suit order prohibiting parallel Dubai proceedings. Despite their admission and plea to purge contempt, the Court dismissed the purging application and imposed fines

	<p>of US\$70,000 on each contemnor. They were also ordered to pay NMC Healthcare Ltd's costs on an indemnity basis, emphasizing the rule of law and obedience to court orders.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned applications by NMC Healthcare Limited (“NMCH”) against Noor Capital PSC (“Noor”) and Mr Abdul Jabbar Al-Sayegh. NMCH, which is in administration and subject to a Deed of Company Arrangement, initiated contempt proceedings against Noor and Mr Al-Sayegh for disobeying a prior order from Justice Sir Andrew Smith dated 5 October 2022 (the “5 October Order”).</p> <p>Specifically, the Court had previously found that Noor and Mr Al-Sayegh committed six acts of contempt by initiating or continuing proceedings in the Dubai Courts, contrary to the 5 October Order which prohibited such actions for enforcement or execution of debt related to NMCH's administration. An additional contempt count was proved for failing to withdraw or stay specific applications in the Dubai Courts by the stipulated deadline in the 5 October Order. These findings were made on 23 February 2023. The purpose of the current hearing was to determine whether the contempts had been “purged” and to impose appropriate sanctions.</p> <p>Several key events occurred after the February 2023 hearing. On 6 March 2023, the Federal Supreme Court dismissed Noor's claim that a conflict of jurisdiction existed between the ADGM Courts and the Dubai Courts. Despite this, Noor took further steps in the Dubai Courts in January and February 2023, attempting to reinstate appeals that sought to lift a stay on the enforcement of a payment order. These actions were acknowledged by Noor and Mr Al-Sayegh as contradicting their stated position and intention, causing NMCH to incur additional costs. A consented variation to the 5 October Order did not bear on the issues to be decided.</p> <p>Analysis</p> <p>The Court addressed the application to “purge” contempt, noting that breaches of prohibitory orders are complete when committed and “cannot be undone”. While failure to comply with a mandatory order could theoretically be remedied later, Noor did not take the commanded steps after the initial deadline. The Federal Supreme Court’s decision did not justify this inaction. Furthermore, Noor's subsequent attempts to revive execution processes in Dubai through its onshore lawyers, regardless of a “miscommunication,” further demonstrated a failure to atone for the contempt and caused prejudice to NMCH by incurring costs. The Court emphasized that expressions of remorse, though genuine in Mr Al-Sayegh's case, are insufficient alone to purge contempt, as the fundamental purpose of punishment is to uphold the rule of law and ensure obedience to court orders. The application to purge was therefore treated as a plea in mitigation.</p>

	<p>Regarding sanctions, the Court acknowledged the seriousness of the breaches, which risked destabilizing NMCH's administration. The ADGM Courts Regulations Section 96(3) provides options for fines, referral to the Attorney General, or other orders. NMCH advocated for a referral to the Attorney General, citing English legal precedent for breaches of freezing or anti-suit injunctions. However, the Court deemed a direct translation of English practice "hazardous" due to the two-step process involved in a referral to the Abu Dhabi Attorney General, where the outcome might remain confidential.</p> <p>Aggravating factors included Noor and Mr Al-Sayegh's sophistication, access to legal advice, and the substantial costs (over US\$1 million) incurred by NMCH, which would burden unsecured creditors. While Mr Al-Sayegh genuinely believed he was enforcing legally available rights, albeit mistakenly, this did not negate the contempt. The Court decided that Noor and Mr Al-Sayegh should bear NMCH's costs on an indemnity basis, finding NMCH's decision to pursue cases against all respondents, even after some admissions, was reasonable given the joint representation and the need to test assertions of sole responsibility.</p> <p>The Court decided to impose fines rather than referring the matter to the Attorney General, based on the substantial costs already borne by the contemnors and the belief that an "immediate and public condemnation" through fines would better serve the public purpose of upholding the rule of law and the necessity of obeying ADGM Court orders. The Court determined that a "mixed" order (fines for some counts, referral for others) was inappropriate, as all contempts formed part of a single course of conduct.</p> <p>Conclusion</p> <p>The Court dismissed Noor and Mr Al-Sayegh's application to purge their contempt. The Court ordered Noor Capital PSC and Mr Abdul Jabbar Al-Sayegh each to pay a fine of US\$10,000 for each of the seven proved counts of contempt, totaling US\$70,000 for each respondent (US\$140,000 combined), payable within 28 days. Additionally, the Court ordered Noor and Mr Al-Sayegh to pay NMCH's costs, including those of the contempt applications and subsequent hearings, on an indemnity basis, with the amount to be agreed upon or assessed. Costs related to witness summons applications were excluded from this order. Liberty to apply was reserved.</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.