

JUDGMENT SUMMARY

Neutral Citation	[2025] ADGMCFI 0004
Case Numbers	ADGMCFI-2020-020; ADGMCFI-2022-111 and ADGMCFI-2022-299
Name of Cases	NMC Healthcare LTD and associated companies Abu Dhabi Commercial Bank PJSC v Prasanth Manghat NMC Healthcare LTD (in administration) (subject to a deed of company arrangement) and others v Bavaguthu Raghuram Shetty and Others
Judge	Justice Sir Andrew Smith
Date Issued	25 March 2025
Catchwords	Evidence on questions of foreign law. UAE law. Calling expert evidence of UAE law at trial. Issues of UAE law determined by legal submissions. Rules 117 and 142 of the ADGM CPR. Section 73(1) of the ADGM Courts Regulations. Section 4 of the ADGM Courts Rules of Conduct. Pre-trial case management. Impartiality of expert witnesses. Costs of expert evidence. Proportionality.
Cases Cited	Sussex Peerage Case (1844) 11 Cl. & F. 85 Re NMC Health Plc (In Administration) [2024] ADGMCFI 0008 NMC Healthcare Ltd & Ors v Neopharma LLC & Ors [2024] ADGMCFI 0013 British Airways Plc v Spencer [2015] EWHC 2477 (Ch) Andrew Mitchell MP v News Group Papers Limited [2014] EWHC 3590 (QB) NMC Healthcare Ltd & Ors v Dubai Islamic Bank PJSC & Anor [2023] ADGMCFI 0017 KV (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 2483 Perry v Lopag Trust Reg [2023] UKPC 16 Fidel v (1) Felecia (2) Faraz [2015] DIFC CA 002
Legislation and Authorities Cited	Federal Law No. (5) of 1985 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates (the “UAE Civil Code”) – Articles 2, 246, 282, 285, 318 and 319 Federal Law No. (8) of 1984 on Commercial Companies

	<p>Federal Law No. (2) of 2015 on Commercial Companies</p> <p>ADGM Insolvency Regulations 2022 – Sections 251 and 252</p> <p>ADGM Court Procedure Rules 2016 – Rules 2, 66(2), 117, 140, 141 and 142</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 73(1)</p> <p>Federal Law No. (20) of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organizations</p> <p>English Civil Procedure Rules 1998 – Rule 35.1</p> <p>ADGM Application of English Law Regulations 2015 – Article 1(1)</p> <p>Abu Dhabi Law No. (4) of 2013 Concerning Abu Dhabi Global Market, as amended by Abu Dhabi Law No. (12) of 2020 (the “ADGM Founding Law”)</p> <p>ADGM Courts Rules of Conduct 2016 – Section 4</p> <p>Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022) – Chapter 3</p> <p>Phipson on Evidence (20th Ed 2022, and Second Supplement, 2024) – Paragraph 33-43</p>
Executive Summary	<p>This judgment considered whether to permit the parties to call expert evidence of UAE law at trial, or whether the issues should be determined on the basis of legal submissions. The judgment outlines the legal framework within the ADGM for addressing foreign law, including relevant court rules and regulations.</p> <p>Ultimately, the Court refused permission for expert evidence on UAE law, deciding instead that the issues would be addressed through legal submissions, citing considerations of proportionality and efficiency. The Court also considered the nature of UAE law as ‘foreign law’ within the ADGM context and the role of counsel in assisting the Court.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns applications made in two related: (i) ADGMCFI-2022-111 - Abu Dhabi Commercial Bank PJSC v Prasanth Manghat; and (ii) ADGMCFI-2022-299 / ADGMCFI-2020-020 - NMC Healthcare Ltd & Ors v Bavaguthu Raghuram Shetty & Ors (the “JA Proceedings”).</p> <p>The main question before the Court was how issues of UAE law should be dealt with at the trial of these actions, which were to be heard together. Specifically, the Court had to decide whether to permit the parties to call expert evidence of UAE law, or whether the issues should be determined on the basis of legal submissions.</p> <p>In the JA Proceedings, NMC Healthcare Ltd, NMC Holdings Ltd, and their Joint Administrators bring claims against Dr Bavaguthu Raghuram Shetty,</p>

	<p>Mr Prasanth Manghat, and the Bank of Baroda ("Baroda") for "<i>at least USD 5 billion</i>".</p> <p>The claims include civil claims against Dr Shetty and Mr Manghat such as: (i) for fraudulent conduct and failing to act with reasonable care under Articles 282 and 285 of Federal Law No. (5) of 1985 (the "UAE Civil Code"); (ii) breach of director/manager duties under Federal Law No. (8) of 1984 and Federal Law No. (2) of 2015 on Commercial Companies; (iii) extortion under Article 304 of the UAE Civil Code; and (iv) unjust enrichment under Articles 318 and 319 of the UAE Civil Code.</p> <p>Claims against Baroda include allegations of fraudulent and careless conduct in contract under Article 246 of the UAE Civil Code and in tort under Articles 282 and 285 of the UAE Civil Code.</p> <p>These civil claims are governed by UAE law. Insolvency claims under the ADGM Insolvency Regulations 2022 are also brought, but are governed by ADGM law.</p> <p>In the other action (ADGMCFI-2022-111), Abu Dhabi Commercial Bank PJSC ("ADCB") claims against Mr Manghat for "<i>at least</i>" US \$1 billion. These claims are also brought under the UAE Civil Code (Articles 282 and 285) and Federal Law No. (2) of 2015 on Commercial Companies, and are therefore governed by UAE law.</p> <p>The Claimants in both actions applied for permission to call expert evidence of UAE law at the trial. Dr Shetty and Baroda opposed these applications. Baroda also applied for permission to deal with questions of UAE law through submissions. Mr Manghat was unrepresented and did not attend the hearing.</p> <p>Analysis</p> <p>The Court noted that the legislative framework in the ADGM, including Rules 117(2) and 142(1) of the ADGM Court Procedure Rules 2016 (the "ADGM CPR") and Section 73(1) of the ADGM Courts Regulations 2015, contemplates that the Court can be assisted on questions of foreign law either by expert evidence or by legal submissions.</p> <p>Rule 142(1) of the ADGM CPR states that expert evidence shall be restricted to that which is "<i>reasonably required to resolve the proceedings</i>". The ADGM Application of English Law Regulations 2015 provide that English common law applies in the ADGM, but subject to modifications required by ADGM circumstances or enactments. Rule 117 of the ADGM CPR, which expressly allows dealing with foreign law by submissions, grants the ADGM a "<i>distinctive flexibility</i>" not present in English law.</p> <p>Furthermore, the Court noted that ADGM Judges accumulate knowledge of UAE law from experience, which is considered a circumstance that can justify modifying the traditional English approach to foreign law.</p> <p>The Claimants argued that expert evidence was not only helpful but "<i>necessary</i>" to resolve the over fifty questions of UAE law, citing: (i) the sheer number of issues; (ii) the fact that the underlying law is in Arabic</p>
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	<p>with potentially limited commentary; and (iii) the fundamental difference between UAE and ADGM law.</p> <p>The Court was not persuaded by the Claimants' argument. The Court noted that guidance on interpreting the UAE Civil Code is available in scholarly writings and the Official Commentary on the UAE Civil Code of the Ministry of Justice, and that the Court has experience dealing with UAE law issues with the assistance of submissions despite differences in language and tradition.</p> <p>The Court weighed arguments concerning pre-trial case management, the importance of the issues, the impartiality of experts vs. lawyers' duties, the merits of cross-examination, and proportionality.</p> <p>While accepting that expert evidence could help focus issues, the Court found that similar benefits could be achieved by ordering early, detailed written submissions on defined issues, including requiring translations. The Court acknowledged the importance of many UAE law issues but concluded that this does not automatically require expert evidence.</p> <p>The Court gave little weight to the argument for expert impartiality, noting that advocates in the ADGM Courts are bound by rules requiring honesty and disclosure. Cross-examination of legal experts was considered potentially inefficient and less effective in multi-party cases than alternative methods like witness conferencing (or Socratic dialogue with the Court and counsel).</p> <p>On proportionality, the Court accepted that expert evidence would significantly increase costs. Although the Claimants argued these costs were modest compared to the sums claimed, the Court considered the resources available to the individual Defendants, noting a risk that Mr Manghat might not be able to afford experts, which impacts fairness.</p> <p>Conclusion</p> <p>Ultimately, the Court concluded that trial management considerations should prevail. It found no realistic prospect that expert evidence would assist in resolving the proceedings fairly and justly; specifically, it concluded that issues were not more likely to be resolved correctly with expert evidence. The additional demands and costs of expert evidence were not justified.</p> <p>Therefore, the applications by the NMC Claimants and ADCB for permission to adduce expert evidence of UAE Law were refused. Baroda's application seeking a direction that UAE Law be dealt with by submissions was granted. The Court gave directions for written submissions on questions of UAE 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.