

## JUDGMENT SUMMARY

|  |   |
|--|---|
| <b>Neutral Citation</b>                  | [2025] ADGMCFI 0005   |
| <b>Case Numbers</b>                      | ADGMCFI-2025-011 and ADGMCFI-2025-012   |
| <b>Name of Cases</b>                     | Vianney Stephane Marie Nicolas Mathonnet v Modus Operations LLC<br>Andre Junior Ayotte v Modus Operations LLC   |
| <b>Judge</b>                             | Justice Sir Michael Burton GBE  |
| <b>Date Issued</b>                       | 27 March 2025   |
| <b>Catchwords</b>                        | Application to stay court proceedings pending arbitration. Whether arbitration clause in employment agreement is null and void, inoperative, or incapable of being performed. Arbitrability of employment claims. Employment rights as a matter of public policy.   |
| <b>Cases Cited</b>                       | NMC Healthcare Ltd and associated companies [2021] ADGMCFI 0006   |
| <b>Legislation and Authorities Cited</b> | Abu Dhabi Law No. (4) of 2013, as amended by Abu Dhabi Law No. (12) of 2020 (the “ADGM Founding Law”) – Articles 13(7) and 13(9)<br>ADGM Arbitration Regulations 2015 – Section 16<br>ADGM Employment Regulations 2019 – Section 1<br>Employment Rights Act 1996 (UK) – Section 203<br>ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 – Rules 2, 3, 9(3) and 9(5)<br>ADGM Divisions and Jurisdiction (Court of First Instance) Rules 2015   |
| <b>Executive Summary</b>                 | This is a joint judgment regarding two separate employment disputes between Andre Junior Ayotte and Vianney Stephane Marie Nicolas Mathonnet, both Claimants, and Modus Operations LLC, the Defendant. The central issue before the Abu Dhabi Global Market (“ADGM”) Court of First Instance (Employment Division) was whether to stay court proceedings initiated by the employees due to the existence of arbitration clauses in their employment agreements. The Court ultimately granted the Defendant's application for a stay in both cases, concluding that the arbitration agreements were not null and void, inoperative, or incapable of being performed. |

|                               |  |
|-------------------------------|--|
| <p><b>Overall Summary</b></p> | <p><b>Background</b></p> <p>This judgment concerns two linked cases in the Abu Dhabi Global Market (“<b>ADGM</b>”) Court of First Instance (Employment Division): ADGMCFI-2025-011 between Vianney Stephane Marie Nicolas Mathonnet and Modus Operations LLC, and ADGMCFI-2025-012 between Andre Junior Ayotte and Modus Operations LLC.</p> <p>The Defendant, Modus Operations LLC, filed identical applications in both cases seeking a stay of court proceedings pending arbitration, pursuant to Section 16(2) of the ADGM Arbitration Regulations 2015 (the “<b>Arbitration Regulations</b>”). The Claimants opposed these applications.</p> <p>The claims made by the Claimants were for unpaid salaries and other employment rights based on Executive Services Agreements (“<b>ESAs</b>”), which contained an arbitration clause (Clause 17) for any dispute relating to the ESAs.</p> <p><b>Analysis</b></p> <p>The Court considered several preliminary matters.</p> <ol style="list-style-type: none"> <li>(1) It found that there was at least a strong arguable case that the ESAs were contracts of employment, despite the Defendant's reference to a Memorandum of Understanding. The case was substantively argued on this basis.</li> <li>(2) The Court did not consider the Claimants' submissions based on public policy to be furthering their case. Neither by reference to ADGM or at all is the question of whether employment claims can be pursued in court or in arbitration a matter of public policy. The Court also noted that the issue of whether the restrictive covenants in the ESAs potentially offend public policy was not yet relevant, as that will only be an issue when they are relied upon (which had not yet occurred).</li> <li>(3) The Court did not consider that a comparison of the presence or absence of express statutory provisions in the United Kingdom or UAE can be determinative. The Court was also not influenced by whether an arbitral award if granted would be enforceable at this stage.</li> <li>(4) The Court also did not find the allocation of jurisdictions within the ADGM Courts to be helpful in resolving the matter.</li> </ol> <p>The central issue, described by the Court as the “<i>short point</i>,” was the inter-relationship between Section 16 of the Arbitration Regulations and the ADGM Employment Regulations 2019 (the “<b>Employment Regulations</b>”):</p> <ul style="list-style-type: none"> <li>• Section 16(1) of the Arbitration Regulations allows a party to an arbitration agreement facing court proceedings regarding a matter subject to arbitration to apply for a stay. Section 16(2) mandates the Court to grant a stay unless the arbitration agreement is null and void, inoperative, or incapable of being performed. The Defendant cited a NMC Healthcare Ltd and associated companies [2021] ADGMCFI</li> </ul> |
|-------------------------------|--|

|  |   |
|--|---|
|  | <p>0006, which stated that if the conditions of Section 16(1) are met, the Court only has grounds to refuse a stay under Section 16(2) and has no other discretion;</p> <ul style="list-style-type: none"> <li>the Employment Regulations 2019 provide employees with rights related to salary, end-of-service gratuity, etc., which were being claimed in these proceedings. Section 1 of these Regulations states that the Regulations' requirements are minimum and that agreements waiving or excluding these requirements (unless expressly permitted) are void; and</li> <li>the Claimants argued that the ADGM Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 (the "<b>Compensation Rules</b>") contain provisions (Rules 2, 3, and 9(3) and (5)) which state that an employee "<i>may apply to the Court</i>" regarding matters under the Employment Regulations. They contended that the arbitration clause (Clause 17 of the ESAs) effectively excludes this right to apply to the Court and is therefore null and void under Section 16(2) of the Arbitration Regulations.</li> </ul> <p>However, the Court rejected the Claimants' argument. It concluded that the Compensation Rules only lay down a procedure for application for some of the requirements in the Employment Regulations and do not amount to mandatory provisions excluding arbitration. The requirements of the Employment Regulations themselves are not excluded. Clause 17 of the ESAs is therefore not null and void, inoperative, or incapable of being performed for the purposes of Section 16(2) of the Arbitration Regulations.</p> <p><b>Conclusion</b></p> <p>Consequently, the Court granted the Defendant's application in each case and ordered a stay of the proceedings. The Court noted that this outcome differed from the position in the UK under Section 203 of the Employment Rights Act 1996.</p> <p>Regarding costs, the Court ordered each Claimant to pay the total filing fees incurred by the Defendant in the amount of USD 500. The Court also ordered each Claimant to pay the Defendant's costs of and incidental to the Defendant's application, to be summarily assessed in default of agreement, but did not award indemnity costs. The Court reasoned that the Claimants had "<i>applied to the Court</i>" as they apparently believed they were entitled to do so under the Compensation Rules, and it was after careful consideration that the Court determined this was not the correct course of action.</p> |
|--|---|

***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.***