

### JUDGMENT SUMMARY

<b>Neutral Citation</b>	[2026] ADGMCFI 0007
<b>Case Number</b>	ADGMCFI-2025-198
<b>Name of Case</b>	A22 & B22 v. C22
<b>Judge</b>	Justice Paul Heath KC
<b>Date Issued</b>	20 February 2026
<b>Catchwords</b>	Costs following discontinuance of proceedings. Court’s discretionary powers as to costs on discontinuance.
<b>Cases Cited</b>	<p>A22 &amp; B22 v. C22 [2025] ADGMCFI 0018</p> <p>Afkar Capital Ltd v Saifallah Fikry [2018] ADGMCFI 0002</p> <p>Brookes v HSBC Bank Plc [2011] EWCA Civ 354</p> <p>Ghafoor v Cliff [2006] EWHC 825 (Ch)</p> <p>R (On the Application of Gourlay) v Parole Board [2021] 3 All ER 95 (UKSC)</p> <p>Turcon v Assaf [2025] ADGMCFI 0002</p>
<b>Executive Summary</b>	<p>This judgment, of the ADGM Court of First Instance, determined the allocation of costs following the discontinuance of proceedings by the Claimants (A22 and B22, referred to as the “<b>Companies</b>”) against the Defendant (“<b>C22</b>”). The Court was requested to apportion costs in circumstances where both parties experienced partial success in preliminary applications prior to the Companies’ discontinuance. Balancing the standard presumption that a discontinuing claimant pays the defendant's costs of the proceedings against the Court's broad discretion to achieve fairness, the Court determined that costs should be split, and issued an order on a standard basis</p>
<b>Overall Summary</b>	<p>The Companies filed a claim seeking a permanent anti-suit injunction to stop C22 from continuing proceedings in the onshore Abu Dhabi Courts, related to a cargo damage dispute. C22 responded to the Claim by filing an application challenging ADGM Courts' jurisdiction to hear the claim. The Companies later filed an urgent interim injunction</p>

	<p>application, which the Court directed to be heard alongside the jurisdiction application.</p> <p>The Court declared that it did have jurisdiction (a success for the Companies), but it dismissed the interim injunction application on its merits (a success for C22). On 8 September 2025, the Companies filed a notice of discontinuance, effectively abandoning their substantive claim. Following this, both parties filed cross-applications for costs. The Companies argued they were entitled to their costs on an indemnity basis for successfully defending the jurisdiction application. Conversely, C22 argued that because the Companies discontinued the claim, the usual rule should apply, making the Companies liable for all costs of the proceedings.</p> <p>The Court considered Rule 172(1) of the ADGM Court Procedure Rules 2016, which establishes a presumption that a claimant who discontinues a claim is liable for the defendant's costs incurred up to the date of discontinuance, unless the Court orders otherwise. The Judge noted that Section 49 of the Courts Regulations and Rule 195 provide the Court with a broad, residual discretion to depart from this position to reach a just result in individual cases.</p> <p>The Court found that had C22's jurisdiction application been heard first and independently, the Companies would have succeeded and likely would have been awarded their costs for that specific application. However, C22 correctly relied on the Rule 172(1) presumption. Furthermore, C22's success in the interim injunction application meant that the Companies' substantive proceeding would almost inevitably have been dismissed for the same reasons had it continued.</p> <p>As to the Companies' request for indemnity costs, the Judge applied <i>Ghafoor v Cliff</i>. The Court determined that neither the Companies' pursuit of the injunction nor C22's jurisdiction challenge was highly unreasonable, and accordingly, costs should be assessed only on the standard basis.</p> <p>The Court ordered that: (i) C22 must pay the Companies' costs on a standard basis specifically concerning the unsuccessful Jurisdiction Application; (ii) the Companies must pay C22's costs of the proceedings on a standard basis for everything else up to the time the Notice of Discontinuance was served; and (iii) as both parties had a similar measure of success in these cross-applications, no order as to costs regarding the costs applications themselves.</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.***