



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN**

REMY ALEXANDRE TURCON

Claimant

and

TOUFIC ASSAF

First Defendant

and

ABDUL KARIM IBRAHIM

Second Defendant

JUDGMENT OF JUSTICE PAUL HEATH KC



Neutral Citation:	[2025] ADGMCFI 0002
Before:	Justice Paul Heath KC
Decision Date:	27 February 2025
Decision:	The Defendants are jointly and severally liable to pay the Claimant's costs in the amount of USD 35,000.
Hearing Date(s):	On the papers
Date of Order:	27 February 2025
Catchwords:	Default Judgment. Court's discretionary powers as to costs. Summary assessment of costs on the standard basis. Costs that are proportionate to the matters in issue and are reasonably incurred and reasonable in amount. Factors relevant to assessment of proportionality and reasonableness.
Legislation Cited:	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ADGM Court Procedure Rules 2026
Cases Cited:	R (on the application of Gourlay) v Parole Board [2021] 3 All ER 95 (UKSC)
Case Number:	ADGMCFI-2024-319
Parties and representation:	Claimant Ahmed Tony of Matouk Bassiouny Defendants No appearance by or on behalf of Defendants

JUDGMENT

The Issue

1. Mr Remy Alexandre Turcon issued this proceeding to claim damages against Mr Toufic Assaf and Mr Abdul Karim Ibrahim for breach of contract. The contract into which they entered (the "**Agreement**") was dated 3 July 2023. Mr Turcon was referred to as the "*Investor*" and Mr Assaf and Mr Ibrahim were called the "*Founders*". The Agreement was designed to facilitate a joint venture between the parties whereby Mr Turcon would invest in e-businesses, that had previously been established successfully by Mr Assaf and Mr Ibrahim. The Agreement referred to these businesses as the "*Robocom Ventures*". The investment was to be made through a company yet to be incorporated, which was to be called Robocom Holding LLC. Mr Turcon paid the sum of USD 800,000 to Mr Assaf and Mr Ibrahim in anticipation of incorporation of Robocom Holding LLC.
2. Mr Assaf and Mr Ibrahim failed to meet their obligations under the Agreement. As a result, Mr Turcon sued them for return of the USD 800,000, plus interest, filing fees and costs. Neither Mr Assaf nor Mr Ibrahim took steps to defend the proceeding. On 14 January 2025, Mr Turcon filed an application



for default judgment (the “**Default Judgment Application**”). On 28 January 2025, I entered judgment against both Mr Assaf and Mr Ibrahim in a sum of USD 800,000 plus interest and filing fees. Unusually, I reserved the question of costs because I considered that an issue of principle arose as to whether (and if so, to what extent) it was appropriate for the Court to take account of the terms of an agreement into which Mr Turcon had entered with his lawyers on 28 October 2024, before the proceeding was issued on 28 November 2024 (the “**Letter of Engagement**”). The Letter of Engagement provided for payment of both a fixed fee for work to be undertaken and a success fee.¹

3. In giving my reasons for reserving the question of costs, I said:

“Reasons for decision

1. *Judgment has been entered by default as sought on liability, quantum and interest. I have, however, reserved the question of costs. I have done so because costs have been sought on the basis that, inter alia, the full amount payable under the [Letter of Engagement] are claimable. Given the Court’s broad discretion as to costs, a significantly lesser amount might reasonably be assessed given the amount of work required to obtain judgment.*
 2. *Therefore, the Claimant shall file submissions setting out the costs sought and explaining the basis on which they are said to be payable having regard to:*
 - a. *sections 49(1), 49(3), 222 and 223 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;*
 - b. *Rules 40A, 195, 197(1) and 198 of the ADGM Court Procedure Rules 2016;*
 - c. *paragraph 7.22 of Practice Direction 7; and*
 - d. *paragraphs 9.21 and 9.22 of Practice Direction 9.*
 3. *If submissions are not filed in time, costs will be assessed based on the work done without reference to the [Letter of Engagement].”*
4. As it transpired, the Letter of Engagement was entered into between the lawyers for Mr Turcon (Matouk Bassiouny, Dubai) and a company called Alexen Avocats (UK) Ltd (“**Alexen**”). The Letter of Engagement was addressed to Alexen, for the attention of Mr Turcon. However, under the heading “*Client and Adviser*”, Matouk Bassiouny stated that Alexen was to be treated as the “*Client*”. As a result, Mr Turcon is not a party to the Letter of Engagement. Accordingly, it is unnecessary for me to consider whether it is strictly enforceable or not, having regard to sections 222 and 223 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the “**Regulations**”).
5. The fact that the Letter of Engagement was entered into between the lawyers and Alexen does not mean that it is irrelevant to the fixing of costs. My approach is to take account of its terms, as a matter of discretion, in deciding what amount this Court should award in favour of Mr Turcon on his successful Default Judgment Application. In that regard, the Letter of Engagement provided for a fixed fee of USD 35,000, with an uplift of USD 64,000 if the claim were successful.
6. On 4 February 2025, Mr Turcon filed a witness statement addressing the points raised in my Order of 28 January 2025. The thrust of Mr Turcon’s evidence is that he personally has the obligation to pay the debt to his lawyers. I am prepared to assume that to be the case. I infer that if Alexen paid the

¹ See para 5 below.



fee, it would likely be adjusted through Mr Turcon’s current account. That means that Mr Turcon was obliged to pay (or to procure payment) to his lawyers a sum of USD 99,000, irrespective of whether judgment followed a trial or was entered by default.

7. Mr Turcon’s position is that the actual costs he was required to pay (USD 99,000) were reasonable and proportionate for the purposes of the legislation to which I referred in my reasons.² In essence, his submission is that USD 99,000 was an appropriate fee to agree in advance, if the claim were successful. At the time that he entered into the Letter of Engagement, Mr Turcon did not know whether the dispute would go to trial; I am prepared to infer that he believed that eventuality was likely.

The Court’s Discretion as to Costs

8. In those particular circumstances, what approach should be adopted by this Court in fixing costs on entry of a default judgment?
9. The starting point is section 49 of the Regulations which, while subject to any other ADGM enactment or court procedure rules, leaves the costs of and incidental to all proceedings in the Court of First Instance to the discretion of a Judge of that Court.³ Section 49(3) states that the Court “*shall have full power to determine by whom and to what extent the costs are to be paid, including, without limitation, the power to determine whether costs are to be paid on the standard or indemnity basis*”.
10. Rule 195(1) of the ADGM Court Procedure Rules 2016 (the “**Rules**”) reinforces the breadth of the discretion by authorising the Court to “*make such orders as it considers just in respect of any application, hearing, trial, appeal or other proceeding before the Court*”. Rule 195 is located in Part 24 of the Rules, which is subject to any rule or practice direction setting out special provisions with regard to any particular category of proceeding before the Court.
11. Read in tandem, section 49 of the Regulations and Rule 195 of the Rules create a costs regime which involves the exercise of a broad discretion in a manner consistent with the criteria or principles set out in relevant rules or practice directions.
12. In *R (on the application of Gourlay) v Parole Board*,⁴ the Supreme Court of the United Kingdom expressed some views about the way in which a discretion as to costs should be exercised. Delivering the judgment of the Supreme Court, Lord Reed P., said:⁵

*“[38] ... In the first place, the principles of practice laid down by the Court of Appeal to guide judges in the exercise of their discretion as to the award of costs are not strictly binding even upon those judges, in the way in which a decision of the Court of Appeal on a point of law is binding upon them. There is always a residual discretion as to costs. **Since “the discretion is to be judicially exercised” (Pepys v London Transport Executive [1975] 1 All ER 748 at 751, [1975] 1 WLR 234 at 237), the application of the principles laid down by appellate courts must be tempered by an ability to respond flexibly to unusual situations, and to reach a just result in the individual case. As was said long ago in relation to the discretion to order a jury trial, “the Court cannot be bound by a previous decision, to exercise its discretion in a particular way, because that would be in effect putting an end to the discretion” (Jenkins v Bushby [1891] 1 Ch 484 at 495.)**” (Emphasis added)*

² See para 3 above.

³ Section 49(1) and (3) are set out at para 20 below.

⁴ *R (on the application of Gourlay) v Parole Board* [2021] 3 All ER 95 (UKSC).

⁵ *Ibid*, at para 38.



13. Rule 39 of the Rules deals with the circumstances in which judgment may be entered by the Civil and Commercial Division of the Court of First Instance. Rule 40A provides supplementary powers that the Court may exercise on an application for default judgment. Among other things, “a default judgment on a claim for a specified amount of money obtained on the filing of an application will be judgment for the amount of the claim (less any payments made), costs and post judgment interest (pre-judgment interest may be included if the conditions in [Rule 40A(3)] are satisfied)”.⁶
14. By paragraph 7.22 of Practice Direction 7 (“PD 7”), an application for a default judgment must contain such particulars as are required by Practice Direction 9 (“PD 9”). Part D of PD 9 deals with the summary assessment of costs on a standard basis, the process that I am undertaking in this case. Rule 198 of the Rules makes it clear that costs on the standard basis are to be assessed by reference to costs that are reasonably incurred, reasonable in amount, and proportionate to the matters in issue.⁷ The Court is to resolve any doubt as to whether costs have been reasonably incurred and are reasonable and proportionate in amount in favour of the paying party – in this case, Mr Assaf and Mr Ibrahim as those against whom the order is being made.⁸
15. Relevantly paragraph 9.21 of PD 9 states:
- “9.21 In relation to the standard basis, costs incurred are proportionate if they bear a reasonable relationship to:
- (a) the sums in issue in the proceedings;
 - (b) the value of any non-monetary relief in issue in the proceedings;
 - (c) the complexity of the litigation;
 - (d) the additional work generated by the conduct of the paying party;
 - (e) any wider factors involved in the proceedings, such as reputation or public importance; and
 - (f) the indicative hourly rates set out in Annexure 1 to this Practice Direction which are designed to provide guidance to parties on charge out rates that are likely to be acceptable to the Court.”
16. While paragraph 9.21 deals with proportionality, paragraph 9.22 is directed to (among other things) the reasonableness of the costs incurred. Paragraph 9.22 of PD 9 states:
- “9.22 In relation to any assessment of costs the Court will have regard to:
- (a) whether the costs were reasonably incurred and are reasonable in amount;
 - (b) the conduct of all the parties;
 - (c) the amount or value of any money or property involved;
 - (d) the importance of the matter to all of the parties;
 - (e) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (f) the skill, effort, specialised knowledge and responsibility involved;
 - (g) the time spent on the case;
 - (h) the place where, and the circumstances in which, work or any part of it was done; and
 - (i) the receiving party’s last approved budget.”

⁶ Rule 40A(2) of the Rules.

⁷ Ibid, Rule 198(1).

⁸ Ibid, Rule 198(2).



Analysis

17. As a matter of practice, this Court has generally fixed costs for a default judgment on a summary basis, in an endeavour to reflect the actual work undertaken to obtain judgment. While, in most cases, that approach would be appropriate, it should not be applied in a way that sidelines other relevant factors. If that were the (unintentional) impact of that approach, it would have the effect of inappropriately fettering the Court’s discretion as to costs.
18. Before this proceeding was issued, Alexen⁹ entered into the Letter of Engagement, by which it (I infer on behalf of Mr Turcon) agreed to pay a fixed fee to a lawyer of USD 35,000. That sum was to be paid irrespective of success. In the event that the claim succeeded, an uplift of USD 64,000 was payable. That meant that a total sum of USD 99,000 was payable once judgment was obtained. No differentiation was made between a default judgment, and one obtained after a contested hearing. USD 99,000 represents 12.37% of the principal amount claimed, USD 800,000. In my view, the terms of the Letter of Engagement are relevant to the fixing of costs. However, it must be considered as part of an assessment of what costs it is appropriate to order against the Defendants; not whether it was a reasonable arrangement as between a claimant and their lawyer.
19. In fixing costs in this Court, article 5.2(c) of the Agreement is also relevant. Article 5.2(c) contained a promise that Mr Assaf and Mr Ibrahim would “pay to [Mr Turcon], on demand, all court costs and expenses incurred or expended by [Mr Turcon], in connection with the enforcement of this [Agreement] and/or the collection of all sums and all of the [obligations of Robocom Holding LLC under the Agreement], whether such collection be from [Robocom Holding LLC] or [Mr Assaf and Mr Ibrahim]”. However, it is implicit in article 5.2(c) that any claimed costs would need to be reasonable. In my view, the promise contained in article 5.2(c) is a relevant factor in the exercise of the discretion as to costs. It suggests that Mr Assaf and Mr Ibrahim believed they would be responsible to meet a significant portion of Mr Turcon’s legal costs if he were successfully to claim for breach of contract.
20. My starting point is the need to exercise the discretion as to costs judicially, and to take account of all relevant factors pertaining to a particular case. In that regard, I note:
- a. section 49 of the Regulations expresses the discretion as to costs in broad terms. In particular, subsections 49(1) and (3) provide:

“49. Costs in the Court of Appeal and the Court of First Instance

(1) *Subject to the provisions of these Regulations or any other ADGM enactment and to court procedure rules, the costs of and incidental to all proceedings in –*

(a) the Court of Appeal; and

(b) the Court of First Instance,

shall be in the discretion of the Court.

...

(3) *The Court shall have full power to determine by whom and to what extent the costs are to be paid, including, without limitation, the*

⁹ See para 4 above.



power to determine whether costs are to be paid on the standard or indemnity basis.

...”

- b. Rule 40A(1) of the Rules empowers this Court to make (in qualifying circumstances) “*such judgment as it appears to the Court that the claimant is entitled to on his statement of case*”. Rule 40A(2) reinforces that the Court may make such orders as to costs that it considers appropriate;
 - c. by paragraph 7.22 of PD 7, any claim for costs must contain such particulars as are required by PD 9;
 - d. the Regulations, the Rules and relevant Practice Directions do not specify the basis on which costs are to be awarded. In the present case, the assessment is being undertaken on a summary basis, by reference to paragraphs 9.21 and 9.22 of PD 9; and
 - e. the Court is to resolve any doubt as to whether costs have been reasonably incurred and are reasonable and proportionate in amount in favour of the party against whom any order will be made.¹⁰
21. The question of proportionality remains a matter of judgment for the Court. The purpose of paragraph 9.21 of PD 9¹¹ is (effectively) to deem costs to be proportionate if “*they bear a reasonable relationship to*” the six factors listed.¹² That does not prevent the Court from determining proportionality by reference to other relevant factors, provided that, in doing so, it does not take an approach at odds with the general guidance contained in the Regulations, the Rules and relevant Practice Directions. Similarly, paragraph 9.22 of PD 9¹³ specifies factors to which the Court will have regard in assessing costs but does not provide that those factors are exhaustive. They provide guidance rather than requiring rigid adherence to them.
22. Having found that the factors set out in paragraph 9.21 of PD 9 are not exhaustive, I have decided that, in determining the quantum of costs that should be paid to Mr Turcon, I should have regard to the following factors:
- a. the Letter of Engagement can be seen as a means by which Mr Turcon was able to bring his claim against Mr Assaf and Mr Ibrahim. To that extent, it should be viewed as an “*access to justice*” consideration. The Court should not disincentivize arrangements that are designed to ensure that litigants are able to commence and prosecute genuine and viable claims;
 - b. the sum in issue in the proceeding was USD 800,000. At the time the Letter of Engagement was entered into, Mr Turcon did not know whether the claim would be defended. There is no doubt that, had the claim gone to trial, the amount of costs involved (USD 99,000) would have been both “*reasonably incurred*” and “*reasonable in amount*”.¹⁴ Nevertheless, the weight to be attributed to this factor is limited. That comparison reflects an assessment of the reasonableness of the costs as between client and lawyer. The Court’s task is to assess the reasonableness of the costs as between the successful party and a defendant against whom costs are to be ordered;

¹⁰ Rule 198(2) of the Rules.

¹¹ Set out at para 15 above.

¹² PD 9, paragraph 9.21 is set out at para 15 above.

¹³ Set out at para 16 above.

¹⁴ PD 9, paragraph 9.21(a) and 9.22(a) and (c).



- c. the terms of article 5.2(c) of the Agreement, by which Mr Assaf and Mr Ibrahim agreed to pay all costs incurred by Mr Turcon to obtain judgment against them¹⁵;
 - d. the importance of the case to Mr Turcon, as described in his witness statement of 4 February 2025¹⁶; and
 - e. the time spent by Mr Turcon’s lawyers on the case.¹⁷ In that regard, I note that their hourly rates are lower than the indicative hourly rate likely to be acceptable by the Court as set out in Annexure 1 of PD 9.
23. In the circumstances, I consider that a significant order for costs should be awarded in favour of Mr Turcon, though not the whole amount that he agreed to pay. In my view, it was not unreasonable for Mr Turcon to incur costs of up to USD 99,000 on the facts as he knew them to be before the proceeding was commenced.¹⁸ The amount of money involved was not insignificant and the proceeding was of importance to Mr Turcon.¹⁹ While Mr Turcon has suggested that the conduct of Mr Assaf and Mr Ibrahim supports his claim for costs, I do not consider that the evidence is strong enough to establish that position. The most significant countervailing factor is the limited amount of work that was required to seek and obtain a default judgment.²⁰
24. On balance, I consider it is appropriate for Mr Assaf and Mr Ibrahim to be ordered to pay the fixed fee agreed between Mr Turcon and his lawyers but not the uplift. Mr Assaf and Mr Ibrahim had no means of knowing what arrangements had been made for funding but did understand that they had promised to meet the costs incurred in seeking any judgment.²¹ Any doubt as to whether an order might be too high must be addressed in terms of Rule 198(2) of the Rules, which states:

“198. Standard basis

...

- (2) *The Court will resolve any doubt which it may have as to whether costs assessed on the standard basis are reasonably incurred and reasonable and proportionate in amount in favour of the paying party.”*

Conclusion

25. For those reasons, I order costs in favour of Mr Turcon against Mr Assaf and Mr Ibrahim, on a joint and several basis, in the sum of USD 35,000. That represents 4.4% of the principal amount for which judgment has been entered by default.
26. There are two points I wish to emphasise, for the benefit of counsel involved in proceedings before this Court:
- a. the award of costs that I have made in this case should not be regarded as having any precedential value of itself. Rather, these reasons should be seen as providing guidance about how the assessment of costs should be undertaken in a case where a default judgment

¹⁵ See para 19 above.

¹⁶ PD 9, paragraph 9.22(d).

¹⁷ Ibid, paragraph 9.22(g).

¹⁸ Ibid, paragraph 9.22(a).

¹⁹ Ibid, paragraph 9.22(c) and (d).

²⁰ Ibid, paragraph 9.22(g).

²¹ See para 19 above.



has been obtained but factors beyond those set out in paragraphs 9.21 and 9.22 of PD 9 are relevant to the discretion as to costs²²; and

- b. the most important point is that the discretion as to costs must be exercised judicially, by reference to all relevant factors. Counsel acting for successful claimants in a case such as this should clearly identify any factors on which they rely to seek costs; particularly those that fall outside of the guidance provided by paragraphs 9.21 and 9.22 of PD 9. Counsel should also indicate the weight that they consider should be given to such factors, and why.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
27 February 2025

²² See paras 15 and 16 above.