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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
EMPLOYMENT DIVISION

IN THE MATTER OF CASE NUMBER ADGMCFI-2025-011
BETWEEN

VIANNEY STEPHANE MARIE NICOLAS MATHONNET
Claimant

and

MODUS OPERATIONS LLC
Defendant

IN THE MATTER OF CASE NUMBER ADGMCFI-2025-012
BETWEEN

ANDRE JUNIOR AYOTTE
Claimant

and

MODUS OPERATIONS LLC
Defendant

JUDGMENT OF JUSTICE SIR MICHAEL BURTON GBE

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Neutral Citation:	[2025] ADGMCFI 0005
Before:	Justice Sir Michael Burton GBE
Decision Date:	27 March 2025
Decision:	1. The Defendant's Application in each case be granted and the proceedings be stayed pursuant to s.16(2) of the Arbitration Regulations 2015. 2. The Claimant in each case to pay the total filing fees incurred by the Defendant in the amount of USD 500. 3. The Claimant in each case pay the Defendant's costs of and incidental to the Defendant's Application, to be summarily assessed in default of agreement. 4. Liberty to apply.
Hearing Date(s):	On the papers
Date of Order:	27 March 2025
Catchwords:	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.
Legislation Cited:	Arbitration Regulations 2015 Employment Regulations 2019 Employment Rights Act 1996 Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 Divisions and Jurisdiction (Court of First Instance) Rules 2015
Cases Cited:	NMC Healthcare Ltd and associated companies [2021] ADGMCFI 0006
Case Numbers:	ADGMCFI-2025-011 and ADGMCFI-2025-012
Parties and representation:	**ADGMCFI-2025-011** **Claimant** Vianney Stephane Marie Nicolas Mathonnet **Defendant** Dimitriy Mednikov, Habib Al Mulla & Partners

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	ADGMCFI-2025-012 **Claimant** Andre Junior Ayotte **Defendant** Dimitriy Mednikov, Habib Al Mulla & Partners

JUDGMENT

1. I have considered together the two identical applications by the Defendant (the "**Applications**") filed on 10 February 2025, opposed by the Claimants in identical terms, for a stay of the claims made by the two Claimants for unpaid salaries and other employment rights pursuant to agreements dated 15 August 2022 as amended, both entitled an "*Executive Services Agreement*" ("**ESAs**"), pending arbitration pursuant to clause 17 in the ESAs, which provide that any dispute in relation to the ESAs shall be referred to arbitration.

2. Article 13(7) of Abu Dhabi Law No. (4) of 2013 as amended by Abu Dhabi Law No. (12) of 2020 (the "**ADGM Founding Law**") grants exclusive jurisdiction in identified matters (including employment disputes) to the ADGM Courts. But Article 13(9) provides: "*Notwithstanding the provisions of paragraph (7) of this Article, the parties may agree to refer their claims or disputes to arbitration*".

3. The Applications have been thoroughly and well argued by both sides. However, as will be seen, I have concluded that the resolution comes down to a short point.

4. Before addressing that short point, I shall deal with preliminary but important matters:

   a. I am satisfied that there is at least a strong arguable case that the ESAs, for the reasons persuasively set out in paragraphs 1 to 11 of the witness statements of both Claimants filed on 25 February 2025, are contracts of employment. Of course, the position would have to be finally proved by oral evidence, but I do not consider that the references made by Mr Dimitriy Mednikov on the Defendants' behalf, in paragraphs 7 to 9 of his witness statements filed on 4 March 2025, to the existence of a Memorandum of Understanding ("**MOU**") between the parties, in relation to the setting up of a capital fund, detract from the clear setting out of employment rights and obligations in the ESAs; a letter to the Defendant from the Claimants dated 13 January 2025 dealing with the MOU refers to them as having "*also entered into Executive Services Agreements on the same date*". The case before me was substantively and rightly argued on the basis that the claims were pursuant to an employment agreement.

   b. On the other hand, I also do not consider that matters are furthered by the Claimants' submissions based on public policy. 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. Mr Mednikov in the legal arguments which he has included in his witness statement of 4 March 2025 refers to the "*very high*" standard of proof, or one which is "*narrow and nuanced*", which has been stated by judgments in the DIFC Courts to be necessary in establishing a UAE or any other public policy, and none such is established; and as for the question, which may or may not arise, of whether the

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restrictive covenants included in clause 9 of the ESAs are so wide as to offend against public policy, that will only be an issue when they are relied upon (which has not yet occurred) and considered by a court (or by an arbitrator).

c. I do not in the end consider that a comparison of the presence or absence of express statutory provisions in the United Kingdom or UAE can be determinative. Equally, I am not at this stage influenced by whether an award if granted would be enforceable. That would be the tail wagging the dog.

d. I also do not find any assistance in the question of the allocation of jurisdictions between the divisions by the ADGM Courts in its Divisions and Jurisdiction (Court of First Instance) Rules 2015, for the reasons set out by Mr Mednikov in paragraphs 24 to 27 of his witness statement of 4 March 2025.

5. I turn then to what I described as the short point, and it is the inter-relationship between two ADGM statutory provisions: –

a. S.16(1) of the Arbitration Regulations 2015 (the "**Arbitration Regulations**") provides that "[a] *party to an arbitration agreement against whom legal proceedings in the Court are brought … in respect of a matter which is the subject of the arbitration agreement may … apply to the Court to stay the proceedings in so far as they concern that matter*"; and s.16(2) provides that "[o]n *an application made under subsection (1), the Court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed*". The Defendant points to the clear statement in para 72 of the judgment of Justice Sir Andrew Smith in NMC Healthcare Ltd and associated companies [2021] ADGMCFI 0006 that "*If and in so far as an application satisfies the conditions of section 16(1), the only grounds on which the Court may refuse a stay are those in section 16(2); otherwise, the Court has no discretion*".

b. The Employment Regulations 2019 (the "**Employment Regulations**") provide rights to an employee in relation to salary, end of service gratuity, etc., such as are being claimed in these proceedings. S.1 provides that "*the requirements of these Regulations are minimum requirements and … a provision in an agreement to waive or exclude any of those requirements, except where expressly permitted under these Regulations, shall be void*". The Employment Regulations 2019 (Compensation Awards and Limits) Rules 2019 (the "**Compensation Rules**") were made by the ADGM Board of Directors pursuant to (former) s.61 of the Employment Regulations, whereby:

> *"(1) The Board may make rules setting out applicable fines and/or appropriate limits of compensation for non-compliance with obligations under these Regulations.*
>
> *(2) Subject to subsection (1), the Registrar may make rules for carrying out these Regulations or for the purpose of furthering one or more of the Regulations' objectives.*
>
> *(3) Without prejudice to the generality of subsection (2), the Registrar may make rules with respect to the application of these Regulations to Employers."*

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c. The Claimants refer to the fact that in Rules 2, 3 and 9(3) and (5) of the Compensation Rules there is provision that the employee "*may apply to the Court*" in respect of matters arising under the Employment Regulations. A clause such as clause 17 in the ESAs is thus said by the Claimants to exclude the right to apply to the Courts for such employment rights as are provided in the Employment Regulations and thus to be null and void for the purposes of s.16(2) of the Arbitration Regulations.

6. As there is an apparent dichotomy, I must resolve it. The question is whether the impact of clause 17 of the ESAs amounts to an exclusion under the Employment Regulations. In resolving that question, I must bear in mind the provisions of Article 13(9) of the ADGM Founding Law referred to above. I conclude 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 s.16(2) of the Arbitration Regulations.

7. Hence, there will be a stay of the proceedings and the Claimants' claims cannot be pursued in this Court. I recognise that this reaches the opposite result to that provided in the United Kingdom by reference to s.203 of the Employment Rights Act 1996.

8. There must be an order for costs in favour of the Defendant in each case. I have considered the rationale for the authorities relied on by the Defendant in support of its application for costs on the indemnity basis, which is based upon deliberate conduct by a party in breaching a contractual obligation to arbitrate. The position here is that the Claimants "*applied to the Court*" as they were apparently entitled to do pursuant to the Compensation Rules, and that after this thoroughly considered application, I have held that that was not a course open to them. It is not a case for indemnity costs.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
27 March 2025