



IN THE FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

28 April 2025

CASE No: AIFC-C/CFI/2023/0018

KANIYA BIZHANOVA

Appellant

v

CENTER FOR SCIENTIFIC AND TECHNOLOGICAL INITIATIVES LTD.

Respondent

JUDGMENT ON ANCILLARY MATTERS

Justice of the Court:

The Rt Hon. The Lord Burnett of Maldon PC DL

JUDGMENT

1. On 6 March 2025 I gave judgment in the claimant's appeal against the order of Justice Banner KC. The appeal was allowed to the extent that the appellant was entitled to receive a sum representing remuneration for 30 days' notice rather 7 days' notice, as allowed by the judge at first instance. I directed that the parties should seek to agree the additional sum due to the appellant, in default of which written submissions should be filed. In addition the parties were directed to file written submissions on costs.

The Sum Due

2. The respondent employer has submitted that the appellant is due an additional 863,333.25 KZT to reflect her success in the appeal. That is calculated as follows. Her contractual pay was 1,200,000 KZT a month. In accordance with the order of the judge below they satisfied the judgment for 7 days' notice by paying her 336,666.75 KZT. The balance is therefore the difference between that sum and 1,200,000 KZT.
3. That simple calculation has not been disputed by the appellant, Ms Bizhanova. Rather, on her behalf her lawyers, seek to argue that she is entitled to receive compensation for lost wages from the date of her dismissal until she filed her claim together with 'moral damages' for the way in which she was dismissed. The total claimed is about 8,360,000 KZT.
4. These claims repeat or echo claims dismissed by the judge and which formed part of the original application for permission to appeal. Leave was not given to pursue those matters by Justice The Rt Hon. Sir Jack Beatson FBA. Permission was given only on the issue concerning the proper notice (7 or 30 days) that Ms Bizhanova should have been given. As was recorded in para 1 of the judgment on the appeal:

"Additional grounds were advanced in the Notice of Appeal on which the question of leave was reserved to the hearing but were not pursued."

5. The only issue in the appeal was the one concerning the proper notice period to which the appellant was entitled on termination of her employment. That was agreed as the sole issue by the parties at the hearing of the appeal. It follows that the appellant cannot now resurrect these additional claims.
6. I accept the respondent's calculation. Justice Banner KC gave judgment in the sum of 747,866.74 KZT made up of 333,666.75 KZT for 7 days' notice, and 411,200 KZT for unlawful deductions from salary. That order is varied to provide for judgment in the sum 1,611,200 KZT made up of 1,200,000 KZT for 30 days' notice and 411,200 KZT, as before, for unlawful deductions. The respondent has satisfied the original judgment which means that there is a further 863,333.25 KZT due to be paid within 14 days in accordance with Rule 25.15 of the AICF Court Rules 2018.

Costs

7. The appellant seeks an order for 1,000,000 KZT for costs of the appeal. She instructed Erik Sabiev of Legal Company Juristat who has provided a statement confirming that Ms Bizhanova paid that sum to his firm. He has also produced a copy of the contract.
8. The respondents dispute that the appellant is entitled to the costs claimed on two grounds. They submit, first, that because no proof of payment, for example a payment order, has been produced, Ms Bizhanova should recover nothing. I do not accept that submission. There is no reason to doubt the statement of Mr Sabiev. In the alternative they submit that the Civil Procedure Code of the Republic of Kazakhstan with respect to costs should be applied to the determination of any sum due. In broad terms they submit that the effect of the code is to allow the recovery of costs on a pro rata basis by comparing the amount claimed in the proceedings and the amount recovered. Ms Bizhanova maintained various claims which,

in the end, she did pursue in the appeal. They suggest that an appropriate costs award would be 200,000 KZT.

9. The respondent is incorrect in suggesting that the Civil Procedure Code of the Republic of Kazakhstan applies to the determination of costs in this court. The AIFC Court Rules 2018 govern the practice and procedure in the AIFC Court. Part 26 concerns costs. Rule 26.4 provides that the court has a discretion both as to whether to order costs and in their amount. By Rule 26.5, if the court decides to make an order for costs the general rule is that the unsuccessful party will be ordered to pay the successful party's costs. Rule 25.6 enables the court to order the payment of a proportion of the successful party's costs. Also material to the application before me is rule 26.11 which provides that 'where the Court is to assess the amount of costs ... it will allow costs which were reasonably and necessarily incurred and were proportionate to the matters in issue.' Rule 26.13 allows for an immediate assessment of costs.
10. This is an appropriate case for an immediate assessment of costs.
11. Having regard to the various relevant aspects of Part 26 of the Rules to which I have referred, I have concluded that the appellant, Ms Bizhanova, should recover 750,000 KZT in costs from the respondents and make such an order. There is substance in the point made by the respondents, albeit by reference to the Kazakh Civil Code, that the costs claimed are disproportionate to the sum eventually in issue in the appeal. Moreover, the sum agreed with Mr Sabiev was in respect of an appeal relating to a more substantial claim. Nonetheless, Ms Bizhanova was entitled to legal representation in the appeal, was successful in the appeal. The reality is that considering the additional claims and pursuing them in the application for permission to appeal would have added relatively modestly to the amount of work of Mr Sabiev and his firm.

By the Court,

The Rt Hon. The Lord Burnett of Maldon PC DL,
Chief Justice, AIFC Court

Representation:

The Appellant was represented by Mr Erik Sabiev, Legal Consultant, Astana Chamber of Legal Consultants, Astana, Kazakhstan.

The Respondent was represented by Mr Ergali Iztaev, Lawyer, Centre for Scientific and Technological Initiatives "Samgau" Foundation, Astana, Kazakhstan.