



IN THE SMALL CLAIMS COURT  
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

2 August 2024

CASE No: AIFC-C/SCC/2024/0004

(1) MS. AISULU OMAROVA  
(2) MR. ALTAI OMAROV

Claimants

v

(1) NEF QAZAQSTAN LIMITED LIABILITY PARTNERSHIP  
(2) TIMUR GAYRIMENKUL GELIŞTİRME YAPI VE YATIRIM A.Ş.  
JOINT STOCK COMPANY

Defendants

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JUDGMENT ON APPLICATIONS IN RESPECT OF COSTS

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Justice of the Court:  
Justice Josephine Higgs KC

## JUDGMENT

- 1.1. The Claimants, Ms. Omarova Aisulu Izataevna and Mr. Omarov Altai Salauatovich, commenced a claim against NEF Qazaqstan LLP (the “**First Defendant**”) and Timur Gayrimenkul Geliştirme Yapi ve Yatırım A.Ş. JSC (the “**Second Defendant**”) (collectively the “**Defendants**”), by submitting a Claim Form to the AIFC Court which was issued by the Court on 17 January 2024.
- 1.2. In their Claim Form the Claimants claimed, in summary, repayment of matured bonds KZX000001185 (the “**Bonds**”) issued by the First Defendant and guaranteed by the Second Defendant, interest, penalties and costs.
- 1.3. By a Judgment dated 26 April 2024 (the “**Judgment**”), I held that the First and Second Defendants were liable to repay the principal sums, penalties and interest, and ordered the Defendants to pay the amounts set out in paragraph 7 of the Judgment.
- 1.4. In their Claim Form, the Claimants also sought costs / attorney’s fees. Paragraph 6.1 of the Judgment recorded that Rule 26.9 of the AIFC Court Rules provides that the Small Claims Court may not order a party to pay a sum to another party in respect of costs, fees and expenses except for such part of any Court fees as the Small Claims Court considers appropriate, or such further costs as the Small Claims Court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.
- 1.5. Paragraph 6.2 of the Judgment recorded that I did not at that time consider that a costs order was appropriate, and that I did not have any information as to the amount of costs incurred by the Claimants.
- 1.6. However, by paragraph 6.3 of the Judgment I permitted the Claimants, if so advised, to file a written statement of costs setting out the amounts claimed and brief grounds on which costs were sought within 28 days of the date of this Judgment, and permitted the Defendants, if so advised, to file any response within 28 days thereafter. Paragraph 6.3 stated that I would then determine the Claimants’ claim for costs on the papers.
- 1.7. The Claimants duly made an application for costs dated 22 May 2024. In accordance with paragraph 6.3 of the Judgment, the Claimants’ application set out the amounts claimed, which total USD 5,215, and the brief grounds on which costs were sought. The Claimants submitted that they were entitled to the full amount of costs: the claim had been successful and the general rule is that the unsuccessful party is ordered to pay the costs of the successful party, the Claimants had required legal assistance in order to litigate before the AIFC Court, and the sum claimed was reasonable and was supported by the statement of costs.
- 1.8. The Defendants did not file a response within 28 days thereafter. The Defendants were reminded of the deadline by emails from the Registry dated 22 May 2024 and 9 July 2024. The Claimants made an application for default judgment dated 9 July 2024.
- 1.9. Having considered the Claimants’ application for costs and application for default judgment, I dismiss the Claimants’ applications for the reasons set out below.
- 1.10. As the Claimants note, they were the successful parties, and the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (Rule 26.5 of the AIFC Court Rules).

- 1.11. However, by Rule 26.9 of the AIFC Court Rules, the Small Claims Court does not have the power to order a party to pay a sum to another party in respect of costs, except (1) for such part of any Court fees as the Small Claims Court considers appropriate, or (2) such further costs as the Small Claims Court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.
- 1.12. The Claimants have not incurred any Court fees, so (1) does not arise.
- 1.13. I have carefully considered whether I should order the Defendants to pay the legal costs which the Claimants have incurred, on the basis that the Defendants have behaved unreasonably.
- 1.14. I do not consider that it would be appropriate to do so. In considering whether the Defendants have behaved unreasonably, I have taken account of the fact that the First Defendant originally failed to serve a Defence in time, that the First Defendant unsuccessfully defended the claim for penalties, and that the Second Defendant did not serve a Defence at any time. Nonetheless, I do not consider that the Defendants have acted “unreasonably” for the purposes of Rule 26.9. In particular, I note that the First Defendant explicitly acknowledged in its Defence that the principal sums claimed were due, and only defended the claim for penalties. I also bear in mind that the First Defendant did not object to the Claimants’ Claim being determined on the papers, or otherwise act in a way which materially increased the costs incurred. In all the circumstances, I am not persuaded that this would be an appropriate case in which to make an award of costs pursuant to Rule 26.9(2).
- 1.15. I do not consider that the Claimants are entitled to default judgment on their application for costs, pursuant to Rule 9 of the AIFC Court Rules, as submitted in the Claimants’ application for default judgment. I do not consider that Rule 9 is applicable. Pursuant to paragraph 6.3 of the Judgment, the Defendants had permission to file a response to the Claimants’ application, if so advised, but they were not required to file a response. Paragraph 6.3 of the Judgment made clear that I would determine the Claimants’ application for costs on the papers. Accordingly, the fact that the Defendants did not file any response does not mean that the Claimants should be entitled to default or automatic judgment on their application for costs.
- 1.16. For the reasons set out above, the Claimants’ applications are dismissed.

By Order of the Court,

Josephine Higgs KC,  
Justice, AIFC Small Claims Court



**Representation:**

The Claimants were represented by Mr. Bakhyt Tukulov, Partner, Tukulov Kassilgov Shaikenov Disputes LLP, Almaty, Republic of Kazakhstan.

The First Defendant was represented in these proceedings by Mr. Nurlybek Sultan Nusipzhanov, ILF A&A Limited Liability Partnership, Almaty, Republic of Kazakhstan, but did not submit a response to the applications.

The Second Defendant was not represented.