



IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

3 December 2020

CASE No: AIFC-C/CA/2020/0009

NURSULTAN ALIYEV

Appellant

v

PROPORTUNITY MANAGEMENT COMPANY LTD.

Respondent

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

1. **The application for permission to appeal is dismissed.**

JUDGMENT

Background

1. By an order and judgment handed down on 3 August 2020 in Case No. AIFC-C/SCC/2020/0002, the AIFC Small Claims Court (Justice Charles Banner QC) dismissed a claim by Nursultan Aliyev for damages and other relief relating to alleged breaches of a contract of employment between him and the defendant, Propportunity Management Company Ltd (“Propportunity”). The judge found that there was no contract of employment between Mr Aliyev and Propportunity.
2. An application by Mr Aliyev for permission to appeal from the decision of the Small Claims Court was dismissed by the AIFC Court of First Instance (Justice Lord Faulks QC) by a judgment handed down on 7 October 2020 in Case No. AIFC-C/CFI/2020/0006.
3. On 29 October 2020 Mr Aliyev filed a further application for permission to appeal, this time to the AIFC Court of Appeal on the basis that it is the “appeal Court” to which a further application may be made pursuant to Rule 29.9 of the AIFC Court Rules 2018. The present order and judgment relate to that application.
4. Written submissions in opposition to the application were filed by Propportunity within the time laid down by Rule 29.14.
5. Rule 29.16 provides for an application for permission to appeal to be determined on paper except as provided for by Rule 29.17. I am satisfied that the present application can and should be determined on paper.

Jurisdiction

6. For the reasons given below, the Court of Appeal has no jurisdiction to entertain the application for permission to appeal. The issue of jurisdiction needs to be addressed by the court although it has not been raised by either party.
7. Part 5 of the AIFC Court Regulations (as made by Resolution of the AIFC Management Council dated 5 December 2017) lays down the jurisdiction of the AIFC Court. Article 26(7) states:

“The Small Claims Court shall have a special fast track procedure for claims below a specified value and Small Claims Court jurisdiction shall be defined in the AIFC Court Rules. Appeals of decisions of the Small Claims Court may be brought to the Court of First Instance, subject to the permission of the Court as set out in the AIFC Court Rules. No appeal lies to the Court of Appeal from any judgment given of the Court of First Instance on an appeal from the Small Claims Court.”
8. Thus, jurisdiction to entertain an appeal from a decision of the Small Claims Court is conferred on the Court of First Instance alone. The Court of Appeal does not have any such jurisdiction. Nor does the Court of Appeal have jurisdiction to entertain an appeal from a decision of the Court of First Instance

on an appeal from the Small Claims Court. Since no appeal lies to the Court of Appeal in respect of such decisions, there is no room for any application to the Court of Appeal for permission to appeal in respect of them.

9. Consistently with the above provisions, the AIFC Court Rules make provision for an appeal from decisions of the Small Claims Court to the Court of First Instance but no further. Part 29 of the Rules governs appeals. By Rule 29.1(2), the rules in Part 29 are stated to apply to appeals to the Court of First Instance from the Small Claims Court. Rule 29.49 states in terms that “No appeal lies from the decision of the Court of First Instance on an appeal from the Small Claims Court”
10. The provision made by Part 29 includes provision for applications for permission to appeal. By Rule 29.5, any appeal (except against a contempt order) requires permission to appeal. By Rule 29.6, permission may be given where the “lower Court” or the “appeal Court” considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard. Rule 29.2 defines “lower Court” as “the Court, tribunal or other person or body from whose decision an appeal is brought”; and it defines “appeal Court” as “the Court to which an appeal is made”. Where it is sought to appeal a decision of the Small Claims Court, that Court is plainly the “lower Court” and the Court of First Instance is equally plainly the “appeal Court”. By Rule 29.8, an application for permission to appeal may be made (1) orally to the lower Court at any hearing at which the decision to be appealed was handed down, or (2) to the appeal Court in an appellant’s notice. That is the context within which Rule 29.9 provides:

“Where the lower Court refuses permission to appeal, a further application for permission to appeal may be made to the appeal Court in an appellant’s notice.”

The effect of this is that where an application for permission to appeal is made at a hearing before the Small Claims Court but is refused by that Court, a further application for permission to appeal may be made to the Court of First Instance as the appeal Court. Rule 29.9 does *not* allow for a yet further application for permission to appeal to be made to the Court of Appeal. To read it as making such provision would be inconsistent with the wording and scheme of the AIFC Court Rules themselves and with the jurisdictional framework established by the AIFC Court Regulations, under which, as indicated above, the Court of Appeal has no appellate jurisdiction in relation to decisions on a small claim.

11. In this case an application for permission to appeal from the decision of the Small Claims Court was made to the Court of First Instance but was dismissed by the Court of First Instance. That is the end of the matter. Mr Aliyev’s further application to the Court of Appeal for permission to appeal pursuant to Rule 29.9 is misconceived and must be dismissed.

Substance

12. My decision that the Court of Appeal has no jurisdiction to entertain the application for permission to appeal makes it unnecessary to deal with the substance of the application. It may be helpful, however, for me to indicate briefly that I agree with the decision of the Court of First Instance and that if jurisdiction had existed I would have refused permission to appeal for the reasons summarised below.
13. As stated in the judgment of the Court of First Instance refusing permission to appeal, the sole issue before the judge in the Small Claims Court was whether Mr Aliyev had a contract of employment with Propportunity or whether he had an internship with Mr Sarsenbayev personally, and on that issue

the judge “came to a clear conclusion on the facts, on the basis of written and oral evidence”. The judge’s conclusion was based on a cumulative list of relevant considerations.

14. In so far as Mr Aliyev takes issue with the judge’s conclusion by reference to the evidence before the Small Claims Court and what happened at the hearing in that Court, there is in my view no substance to the points advanced.
15. The main basis of Mr Aliyev’s applications for permission to appeal, first to the Court of First Instance and now to the Court of Appeal, is his reliance on material which was not in evidence before the Small Claims Court. As he states in the present application, “I decided to look for other evidences to appeal in this case” and “I’ve provided whole new proofs, giving me the chance to defend my stance on this whole case”. He attaches particular significance to information reportedly given by Mr Sarsenbayev to the Astana Financial Services Authority (“the AFSA”) in support of an application for AFSA authorisation by International Law Company Ltd, and to evidence relating to legal services provided to Altyn Tau Company LLP under a contract between that company and International Law Company Ltd “represented by the management company Proportunity”. That material is said to be inconsistent with oral evidence given by Mr Sarsenbayev to the Small Claims Court that work done by Mr Aliyev was for Mr Sarsenbayev personally and not as an employee of Proportunity. There are various other matters relied on in addition as damaging the credibility of Mr Sarsenbayev and the case advanced by Proportunity in the Small Claims Court.
16. It appears that Mr Aliyev views an appeal as an opportunity to relitigate the case with the benefit of the additional evidence he has found. The normal position, however, is that an appeal will be limited to a review of the decision of the lower Court (Rule 29.44) and that unless it orders otherwise the appeal Court will not receive evidence which was not before the lower Court (Rule 29.46). The receipt of fresh evidence by the Court on an appeal will therefore be an exceptional course. The Court can be expected to be particularly slow to receive such evidence on an appeal from the Small Claims Court since, as Justice Charles Banner QC observed in refusing permission to Proportunity to file evidence out of time in Mr Aliyev’s case, the main objective of that Court is to provide a fast-track, streamlined means of determining small claims. Further relevant factors in the present case would include the specific opportunity given to the parties in the Small Claims Court to file additional evidence within a set timetable before the hearing of the claim; consideration of the extent to which the fresh evidence could have been obtained with reasonable diligence in time for that hearing; the fact that there is no direct evidence from the AFSA (Mr Aliyev simply recounts what he has been told by an AFSA official and asks the Court to request from the AFSA “all materials and testimonies” regarding the authorisation of International Law Company Ltd); the issues raised in Proportunity’s submissions as to the admissibility, relevance and reliability of aspects of the fresh evidence; and the fact that the fresh evidence goes only to part of the considerations on which the judge’s conclusion in the Small Claims Court was based.
17. Taking an overall view of the matter and directing myself by reference to the criteria in Rule 29.6, I do not consider there to be a real prospect that the fresh evidence relied on by Mr Aliyev would be received by the Court on an appeal or that an appeal would have a real prospect of success. Nor is there some other compelling reason why an appeal should be heard. To the extent that the application for permission to appeal raises issues concerning the AFSA authorisation of International Law Company Ltd, such issues are properly left to the AFSA to examine if it considers it appropriate to do so.

Conclusion

18. Accordingly, the application for permission to appeal is dismissed on jurisdictional grounds but would have been dismissed in any event on substantive grounds if the Court had had jurisdiction to entertain it.

By the Court,

Representation:

The Appellant represented himself.

The Respondent was represented by Ms. Gaussar Abduova, Counsel (instructed by Mr. Arman Barmenbayev, Director, Proportunity Management Company Ltd.).