

IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

16 June 2025

CASE No: AIFC-C/SCC/2025/0008

MOHAMMED BASHIR MOHAMMED ELHASSAN

Claimant

v

ELNAIM OSAMA HASSAN AHMED

Defendant

JUDGMENT AND ORDER

Justice of the Court:
Justice Tom Montagu-Smith KC

ORDER

UPON the Claimant's claim for recognition and enforcement of a judicial settlement agreement of a proceedings before the Courts of Dubai, United Arab Emirates.

AND UPON the Court directing that the issue of the Court's jurisdiction be determined first.

AND UPON HEARING counsel for the Claimant and the Defendant appearing in person.

AND UPON READING the further written submissions filed by the Claimant.

IT IS ORDERED THAT:

1. The Court declares that it has no jurisdiction over the claim and the claim is accordingly dismissed.

JUDGMENT

1. By this claim, the Claimant seeks recognition and enforcement of a settlement agreement ("the Settlement Agreement") concluded to compromise proceedings before the Court of Dubai, United Arab Emirates ("*the Dubai Court*"). I directed that the Court would consider the issue of its jurisdiction first, before considering the merits of the claim. This is my decision on that issue.
2. The parties entered into the Settlement agreement on 8 November 2023. Pursuant to its terms, the Defendant was obliged to pay the Claimant the sum of AED 200,000 (c. USD 54,560) in four equal instalments between January 2024 and April 2024. The Judge of the Dubai Court approved the Settlement Agreement and certified it as an enforcement document.
3. According to the Claimant, the Defendant has not complied with his obligations and a total of AED 153,138.50 remains unpaid. On 2 July 2024, the Dubai Court certified that amount as being outstanding.
4. The United Arab Emirates and Kazakhstan has concluded an agreement for mutual judicial assistance in civil and commercial matters ("*the Convention*"). Article 4(2)(c) of the Convention provides (in English translation) that the two countries shall grant each other mutual judicial assistance in the "*recognition and execution of decrees and settlements*". The Claimant's position is that the Settlement Agreement falls within these terms and so falls for execution in the Courts of Kazakhstan.
5. The Claimant first sought recognition and enforcement in the Astana Interdistrict Civil Court. That attempt failed and an appeal was dismissed by the Astana City Court. The Claimant's position is that those Courts were wrong to dismiss the claim. I make no comment on those proceedings. The current position is that the Claimant wishes to appeal to the Supreme Court of Kazakhstan, but is unable to do so without an Individual Identification Number, which he currently does not have, but hopes to obtain.
6. In the meantime, the Claimant approaches this Court for recognition and enforcement of the Agreement.

7. The Defendant for his part accepts that he has paid only one installment under the Settlement Agreement and has not paid the balance. He accepts that he is obliged to pay, but says he is unable to do so.
8. The Defendant does not himself dispute this Court's jurisdiction. He takes no position on the issue. However, the Court's jurisdiction is established by legislation and its limits do not depend on whether jurisdiction is disputed. It is not said that the Defendants has submitted to the jurisdiction, nor that jurisdiction exists as a result of submission. It is therefore open to the Court to consider whether it has jurisdiction over a given claim, regardless of the position of the Defendant.
9. The Claimant accepts that the Court's jurisdiction is derived from the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre (*"the Constitutional Statute"*).
10. Article 13 of the Constitutional Statute bears the heading "AIFC Court".
11. Article 13(1) provides:

"The judicial settlement of disputes specified by paragraph 4 of this article is to be undertaken exclusively by the AIFC Court."
12. Article 13(4) provides:

"The AIFC Court has exclusive jurisdiction in relation to the hearing and adjudication of the following disputes, but does not have jurisdiction in criminal and administrative proceedings:

 - 1) disputes between AIFC Participants, AIFC Participants and AIFC Bodies and an AIFC Participant or AIFC Body and its expatriate Employees;
 - 2) disputes relating to activities conducted in the AIFC and governed by the Acting Law of the AIFC;
 - 3) disputes transferred to the AIFC Court by agreement of the parties."
13. Article 13(10) provides:

"The AIFC Court has exclusive jurisdiction to interpret AIFC Acts."
14. These provisions are reflected in the AIFC Court Regulations, which set out these bases of jurisdiction at Regulation 26(1).
15. Article 13(8) of the Constitutional Statute provides for the enforcement of AIFC Court judgments in Kazakhstan. Article 13(9) provides for the enforcement in the AIFC of judgments from the Courts of Kazakhstan.
16. Article 14 of the Constitutional Statute provides (at Article 14(3)) for the recognition and enforcement of AIFC IAC arbitration awards in Kazakhstan and (at Article 14(4)) for the recognition and enforcement of Kazakhstan arbitral awards in the AIFC. It appears clear that those provisions bring with them, at least by implication, the jurisdiction to recognize and enforce judgments and awards of those types.
17. These provisions are reflected in AIFC law.
18. The AIFC Court Regulations, Article 40(1) provides for enforcement within the AIFC of AIFC Court

judgments and of arbitration awards ratified by the AIFC Court.

19. Article 40(2) provided for the enforcement in Kazakhstan of AIFC Court judgments and AIFC seated awards.
20. Article 40(3) provides that “*the Court may issue rules or practice directions for the further enforcement of other judgments and arbitration awards*”.
21. In addition, Article 45(1) of the AIFC Arbitration Regulations provides that arbitral awards may be enforced in the AIFC “*irrespective of the State or jurisdiction in which it was made*”.
22. Chief Justice Lord Mance considered these provisions in *Michael Wilson & Partners Ltd v CJSK Kazsubton and ors* (CFI/2023/0002) dated 26 September 2023. In that case, the Chief Justice found that the Court lacked jurisdiction to recognize and enforce a judgment from the Courts of England and Wales. The Judge emphasized the following:
 - 1) The AIFC Court and Arbitration Regulations are subsidiary law. The Constitutional Statute is the primary source from which those laws are derived (paragraph 34).
 - 2) Articles 13(9) and (10) provided for mutual recognition and enforcement between the AIFC and Kazakhstan Courts. The Constitutional Statute says nothing more about recognition and enforcement of court decisions (paragraph 36).
 - 3) The drafters were careful to distinguish between judgments and awards emanating from within and outside Kazakhstan. Provision is made for enforcement of those from within Kazakhstan. There are no provisions relating to enforcement of judgments from outside Kazakhstan (paragraph 39).
 - 4) It might be arguable that, where there is a treaty, there might be jurisdiction to enforce foreign judgments in accordance with Article 4 of the Constitutional Statute and Regulation 45(1) of the AIFC Arbitration Regulations (paragraph 40). However, that issue did not need to be decided.
 - 5) No rules or practice directions had been issued pursuant to Court Regulation 40(3). It was not open to the Court effectively to make such a rule in an individual judgment (paragraph 42).
 - 6) In any event, no rule could be created which was not constitutionally authorized. The scope of the Court’s jurisdiction would first need to be found in the Constitutional Statute (paragraph 43). Regulation 40(3) could not create a jurisdiction which did not already exist (paragraph 47).
 - 7) The drafting of the Constitutional Statute indicated that it was not intended that foreign judgments would be enforced in the AIFC Court (paragraph 51).
 - 8) The effect of enforcement in the AIFC Court would have the effect of side-stepping the laws and processes for enforcement of foreign judgments which exist in Kazakhstan law. This would be “remarkable” (paragraph 52).
23. The Chief Justice rejected the argument that it was not necessary to find jurisdiction within the Constitutional Statute at all (paragraph 53). He noted that the relevant provisions were Articles 13 and 14. However, he did not rule out the possibility that in some cases, Article 4 might also be relevant.

24. The Claimant accepts that the claim does not fall within any of the grounds of jurisdiction identified in Article 13 or 14 of the Constitutional Statute. That concession was rightly made in light of the decision of Chief Justice Lord Mance.
25. Rather, the Claimant relied on Article 4 of the Constitutional Statute.
26. Article 4 of the Constitutional Statute bears the heading “Acting Law of the AIFC.” Article 4(1) states as follows:
- “The Acting Law of the AIFC is based on the Constitution of the Republic of Kazakhstan and consists of:
- 1) this Constitutional Statute; and
 - 2) AIFC Acts, which are not inconsistent with this Constitutional Statute and which may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres, adopted by the AIFC Bodies in the exercise of the powers given by this Constitutional Statute; and
 - 3) the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by this Constitutional Statute and AIFC Acts.”
27. According to the Claimant, the terms of the Convention are part of Kazakhstan law. AIFC law does not deal with the recognition and enforcement of foreign judgments in the AIFC. As a result, the Convention is incorporated into AIFC law by Article 4(3) of the Constitutional Statute.
28. The Claimant also relies on paragraph 40 of Chief Justice Lord Mance’s judgment, where he said:
- “It is unnecessary to consider what would be the position in the AIFC Court if there were a relevant treaty between the United Kingdom or the Netherlands and the Republic of Kazakhstan, providing for the reciprocal recognition and enforcement of judgments. If and when such a question ever arose, it would no doubt be necessary to pay close attention to the provisions regarding the Acting Law of the AIFC, set out in Article 4 of the Constitutional Statute.”
29. According to the Claimant, the Convention confers jurisdiction by Article 19(b) of its terms. In my view, that is not what Article 19 of the Convention is intended to achieve. Article 19 is one of a number of provisions which follows Article 17. Article 17(2) provides that each contracting party (i.e. the Republic of Kazakhstan and the United Arab Emirates) shall enforce decisions issued by a competent court of the other party. The purpose of the provisions which follow, including Article 19, is to set out the circumstances in which the issuing court will be deemed to be competent. Article 19 is about whether or not the issuing court had jurisdiction to issue the decision which is the subject of enforcement proceedings. It is not to identify the circumstances in which the enforcing court might have jurisdiction to enforce.
30. In any event, the question remains – whether Article 4 of the Constitutional Statute incorporates the Convention into AIFC law and thereby creates jurisdiction over claims to enforce foreign judgments which are covered by the Convention. In my view, it does not.
31. Article 4(3) incorporates Kazakhstan law only to the extent that it relates to “*matters not governed by*” the Constitutional Statute and AIFC legislation. Article 13 and (by implication) Article 14 deal with

the jurisdiction of the AIFC Court. As such, any legislation that confers jurisdiction, whether expressly or impliedly, would not be incorporated. This is unsurprising. Otherwise, the entire Kazakhstan law of jurisdiction could be superimposed over Articles 13 and 14. Where those Articles did not confer jurisdiction over a certain type of claim, it would be possible to say that it was imported via Article 4(3). In my view, that is not what is intended by Article 4(3). The provision is concerned with the principles of substantive law.

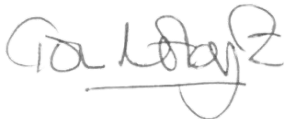
32. The Claimant's position is that Article 13 only provides for the exclusive jurisdiction of the AIFC Court. As such, the scope of its non-exclusive jurisdiction remains open. I would accept that Article 13 is not the only source of jurisdiction in the Constitutional Statute. In particular, it appears likely that Article 14 brings with it the implied jurisdiction required to determine claims for the enforcement of judgments and awards which fall within its terms. It is however be another thing to argue that the jurisdiction of the AIFC Court is not a "*matter*" which is "*governed by*" the Constitutional Statute. If it is, there is no room for further jurisdiction rules to be imported via Article 4(3).
33. It may be arguable that Article 4(3) imports substantive Kazakhstan law on the enforcement of foreign judgments, whether by importing the Convention and any other relevant inter-state agreements or by importing any general Kazakhstan law rules for the enforcement of foreign judgments. If I needed to decide the issue, I would say that it does not, because the legislator has dealt with the recognition and enforcement of judgments and arbitration awards generally, in the Constitutional Statute and in the AIFC Arbitration and Court Regulations. Those set out a carefully crafted statement of the kinds of judgments and arbitral awards which may be enforced in the AIFC Court. The omission of foreign judgments appears not to be a gap capable of being filled by Article 4(3). Rather, it appears to be a deliberate omission.
34. It may be said that Article 45(1) of the AIFC Arbitration Regulations would incorporate the Convention as a matter of substantive law. However, I would disagree. I prefer the view tentatively suggested by Chief Justice Lord Mance at paragraph 40 of his judgment, that that provision is not intended to deal with the enforcement of foreign judgments.
35. In any event, the point does not arise. Even if AIFC law provided for the enforcement of judgments from the United Arab Emirates in accordance with its terms, there would still be need to establish jurisdiction. Whether it be argued that jurisdiction would be conferred expressly or impliedly on incorporating the Convention, it would still need to be said that Kazakhstan law was incorporated via Article 4(3) in order to confer jurisdiction. In my view, jurisdiction is a matter which is governed by the Constitutional Statute. As a result, at least to that extent, Kazakhstan law would not be incorporated.
36. This does not mean that assets and parties within the AIFC are immune from enforcement of judgments from the United Arab Emirates. It would remain possible to seek recognition and enforcement in the Kazakhstan Courts and then seek execution of that decision in the AIFC. This would avoid the result, which Chief Justice Lord Mance described as "*remarkable*" that a party could side-step the Kazakhstan Courts altogether. In this case, that point is particularly acute as the AIFC Court is asked to find that the Kazakhstan Courts are wrong about the application of Kazakhstan law and give the Claimants a second chance to run substantially the same arguments again.
37. In the case of AIFC Participants and Bodies, jurisdiction would be established under Article 13(4)(1). It may then be possible to enforce against them directly, if (contrary to my preliminary view) the Convention is incorporated into AIFC law or, alternatively, if rules or practice directions are created pursuant to Article 40(3) of the Court Regulations.

38. As a second argument, the Claimant relies on comments made in paragraph 42 of Chief Justice Lord Mance’s judgment as follows:

“There may be situations where the Court can and should find a way of filling an obvious lacuna in the rules or practice directions.”

39. That argument can be rejected shortly. The Chief Justice went on to say that the circumstances of that case were not such a situation. That was because the mechanism being suggested was, in effect, that the Court should create a rule or practice direction by its judgment, which would fall within Article 40(3) of the AIFC Court Regulations and so authorize the recognition and enforcement of foreign judgments. That was impermissible. Even if it could be done in theory, the rule or practice direction itself could not go beyond the boundaries of the Constitutional Statute.
40. The Claimant’s third argument is that this issue can be resolved through judicial development of the law. In my view, it cannot, at least in this area of the law. The Court’s jurisdiction is created by statute, and it is confined to the four corners of that statute. It is open to judicial interpretation. However, the Court cannot create jurisdiction for itself through its judgments.
41. In the circumstances, my view is that the Court lacks jurisdiction over this claim and the claim falls to be dismissed accordingly.
42. I do however express my thanks to Mr Bolatbek Yerzhan Serikzhanuly who presented the arguments on behalf of the Claimant with great clarity and skill.

By Order of the Court,



Justice Tom Montagu-Smith KC,
Justice, AIFC Court



Representation:

The Claimant was represented by Mr Bolatbek Yerzhan Serikzhanuly, legal representative.

The First Defendant appeared in person.