

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

13 June 2025

CASE Nos: AIFC-C/CFI/2023/0002, AIFC-C/CA/2023/0040 and AIFC-C/CFI/2024/0018

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

v

(1) CJSC KAZSUBTON
(2) KAZPHOSPHATE LLP
(3) KAZPHOSPHATE LIMITED

Defendants

- and -

MICHAEL EARL WILSON

Added Party

JUDGMENT ON MATTERS CONSEQUENTIAL UPON THE JUDGMENT OF 6 MAY 2025 ON THE SECOND
DEFENDANT'S APPLICATION FOR COSTS AGAINST MR MICHAEL EARL WILSON

Justice of the Court:

Justice Sir Stephen Richards

JUDGMENT

1. In a judgment dated 6 May 2025, following a hearing held on 23 April 2025, I allowed an application by the Second Defendant (KPLL) for costs against Mr Michael Earl Wilson personally pursuant to Rule 26.26 of the AIFC Court Rules and I dismissed a cross-application by the Claimant (MWP). At the end of the judgment I gave directions as to the provision of a draft Order for the Court’s consideration and as to any consequential application for costs.
2. MWP has since submitted a “Table of Errata” in the judgment. They include a few typographical errors, in particular “MPW” for “MWP” in a few places, which are obvious and not liable to mislead the reader. They consist otherwise of disputed points the correctness and materiality of which could be raised, if thought fit, in an application for permission to appeal against the judgment. None of them requires correction of the judgment as handed down.
3. MWP has also applied to “recall and re-open” the hearing held on 23 April 2025 and to “rescind, set aside and vary” the judgment of 6 May 2025. The matters raised are in summary: that Mr Wilson is not subject to the jurisdiction of the AIFC Court; that the hearing was believed to be listed only to deal with preliminary or procedural issues; that owing to a material procedural irregularity the hearing proceeded without full argument on relevant issues; that the AIFC Court was wrong to determine the issue of set-off, which was not before it; that there was a failure to consider a relevant judgment of the Supreme Court of Kazakhstan; and an argument as to apparent or actual bias on my part. I consider it appropriate in the circumstances to deal with the application summarily on the papers, without the oral hearing requested in it and without awaiting the outcome of MWP’s request for the digital record of the hearing on 23 April. I do not accept the arguments advanced in the application, but more important is that the appropriate way to pursue them would be by way of an application for permission to appeal against the judgment. I therefore refuse the application to recall and re-open the hearing and to rescind, set aside and vary the judgment.
4. Accordingly, the judgment of 6 May 2025 stands in the form in which it was handed down.
5. In accordance with the directions at the end of the judgment, Mr Tukulov has provided the Court with a draft Order to give effect to the Court’s decision. MWP has also made submissions on the terms of an Order, including as to costs, and has submitted a rival draft for the Court’s consideration. Costs are considered separately below. The remainder of MWP’s draft refers in part to matters that I have dismissed in paragraphs 2 and 3 above, raises issues of enforcement (such as a travel ban) that are not before me, and is otherwise less suitable than the terms of the draft provided by Mr Tukulov. I accept the substance of Mr Tukulov’s draft and adopt it with relevant additions in the Order below.
6. There is a consequential application by KPLL for costs against Mr Wilson in the sum of KZT 3,500,298.9 in respect of attorneys’ fees incurred by KPLL in the course of the current proceedings. MWP has made submissions in opposition to the application. Again I consider it appropriate to deal with the issue on the papers, as indicated at the end of my judgment of 6 May 2025.
7. This is a proper case for the award of costs. By Rule 26.5(1) of the AIFC Court Rules the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party unless the Court decides otherwise. I see no reason for departing from the general rule in this case. KPLL is clearly the

successful party overall. It won on all the substantial issues decided in the judgment, save for the wasted costs order sought in the alternative to the order under Rule 26.26 which formed in practice KPLL’s primary case. Little time was spent on that alternative issue and in my view KPLL’s failure on it does not warrant any reduction in the amount of costs awarded to KPLL, let alone a separate award in Mr Wilson’s favour on that issue.

8. As to the amount of costs, the application is supported by a statement of truth and a Statement of Costs giving brief particulars of hourly rates and hours worked. MWP submits that this is “materially non-compliant” and that greater detail is required, as on Form N260 in the English High Court, with detailed supporting evidence. I reject that submission. This is a case where immediate assessment is sought and is appropriate. By Rule 26.14, a party who intends to claim immediate assessment “shall prepare a written statement of the costs he intends to claim”. KPLL’s Statement of Costs meets that requirement and in the circumstances I see no reason to doubt its accuracy or to require greater detail. Further, I consider that the costs claimed meet the criterion in Rule 26.11 that they “were reasonably and necessarily incurred and were proportionate to the matters in issue”.
9. Accordingly, I will order Mr Wilson to pay the costs of the application in the full amount claimed by KPLL.
10. The draft Order put forward by MWP, and the accompanying submissions on the terms of an Order, make reference in general terms to the grant of permission to appeal against the judgment of 6 May 2025 and the Order. No application for permission to appeal has otherwise been made to me, and the circumstances envisaged in Rule 29.8(1) for an application to the lower Court do not apply. But for the avoidance of doubt I would refuse permission to appeal and will include a provision as to refusal of permission in the Order.
11. To give effect to the judgment of 6 May 2025 and the matters considered above, I make the following Order:

ORDER

UPON the Orders of this Court made in Case No: AIFC-C/CFI/2023/0002 and Case No: AIFC-C/CFI/2024/0018 (together, the “Costs Orders”), by which Michael Wilson & Partners Limited (“MWP”) was ordered to pay the costs of Kazphosphate LLP (“KPLL”) in the total amount of USD 14,238.45 and KZT 1,000,000

AND UPON the application by KPLL for an order that Mr Michael Earl Wilson (“Mr Wilson”) be personally liable on a joint and several basis with MWP for the costs payable under the Costs Orders

AND UPON the Court being satisfied, for reasons set out in its judgment dated 6 May 2025, that the conditions for the making of such an order against Mr Wilson are satisfied and that it is just to exercise its discretion in KPLL’s favour in this case and to make such a costs order against Mr Wilson

AND UPON the Court being mindful that KPLL would not attempt to, and would not be allowed to, recover from MWP and Mr Wilson a sum in excess of the total payable by MWP under the Costs Orders

AND UPON the Court’s consideration of the further matters set out in its judgment of 13 June 2025

IT IS ORDERED THAT

1. KPLLП's application for costs against Mr Wilson pursuant to Rule 26.26 of the AIFC Court Rules is allowed;
2. MWP's cross-application for a declaration that the said application by KPLLП is not a proper and valid application is dismissed;
3. MWP's application to recall and re-open the hearing held on 23 April 2025 and to rescind, set aside and vary the Court's judgment of 6 May 2025 is also dismissed;
4. Mr Wilson shall be jointly and severally liable with MWP for the payment of the costs ordered under the Costs Orders in the total amount of USD 14,238.45 and KZT 1,000,000;
5. Nothing in this Order shall prevent KPLLП from pursuing enforcement against either MWP or Mr Wilson in respect of such costs, provided always that the total amount recovered shall not exceed USD 14,238.45 and KZT 1,000,000 combined;
6. In addition, Mr Wilson shall pay forthwith to KPLLП its costs of KPLLП's application pursuant to Rule 26.26, in the sum of KZT 3,500,298.9;
7. KPLLП shall have the right to apply for the respective Execution Order or Orders against Mr Wilson;
8. Permission to appeal against the judgment of 6 May 2025, the judgment of 13 June 2025 and this Order is refused.

By the Court,

The Rt Hon. Sir Stephen Richards

Justice, AIFC Court

Representation:

The Claimant and the Added Party were represented by Mr Michael Wilson, assisted by Mr Yermek Aubakirov, both of Michael Wilson & Partners, Ltd, Almaty, Kazakhstan.

The First Defendant was not represented.

The Second Defendant was represented by Mr Bakhyt Tukulov, Partner, assisted by Ms Mariya Petrenko, Associate, both of TKS Disputes LLP, Almaty, Kazakhstan.

The Third Defendant was not represented.