



**ABU DHABI GLOBAL MARKET COURTS**  
**محاكم سوق أبوظبي العالمي**

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**COURT OF FIRST INSTANCE**  
**EMPLOYMENT DIVISION**

BETWEEN

**KARIN BERARDO**

CLAIMANT

AND

**STUMPF ENERGY LIMITED**

DEFENDANT

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**JUDGMENT ON APPLICATION FOR STAY AND COSTS**

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<b>Neutral Citation:</b>	[2018] ADGMCFI 1
<b>Before:</b>	His Honour Justice Sir Michael Burton
<b>Decision Date:</b>	20 April 2018
<b>Decision:</b>	<ol style="list-style-type: none"><li>1. The Defendant's Application is adjourned, and may not be reinstated until after 28 May 2018.</li><li>2. By 4.00 pm (UAE time) on 4 May 2018, the Defendant is to pay to the Claimant 50% of the Claimant's reasonable costs of the Defendant's Application, summarily assessed in the sum of US\$20,000.</li><li>3. The balance of 50% of the Claimant's costs and 50% of the Defendant's costs are to be costs in the case.</li></ol>
<b>Hearing Date(s):</b>	20 April 2018
<b>Date of Orders:</b>	20 April 2018
<b>Catchwords:</b>	Stay of proceedings; parallel criminal proceedings in onshore courts; costs
<b>Case Number:</b>	ADGMCFI-2017-004
<b>Parties and representation:</b>	Mr. Timothy Killen instructed by Al Tamimi & Company for the Claimant Mr. James Wynne instructed by DLA Piper Middle East LLP for the Defendant

**JUDGMENT:**

1. I shall deal with costs in a moment. I am going to adjourn the application on the basis that it cannot be restored until after May 28th. I am doing this on two bases but they both come together, namely that the decision which I am making has become academic for two reasons. First it is apparent that the Respondent is not today seeking to adjourn the case, and therefore for me to decide whether they could have pursued it, had they wanted to or had they pressed it, is an academic question. Of course, there are many cases, particularly where costs are involved, where the Court will decide such a question, but it is nevertheless academic where a stay is no longer being sought.



2. More important, however, in my view, is that it is academic because, as of now, we have no idea whether there will be parallel civil and criminal cases going forward. I entirely understand the concept that one wants to avoid having different courts deciding the same questions, possibly on the same evidence, particularly where this Court has both the exclusive jurisdiction to try the case and the proper law by reference to which to try it which the parties have agreed is a term of their employment.
3. So as of now, it is important to consider whether there might be a conflict between the criminal court and the civil court. But we do not know whether that will be the case, because as of now it is, as Mr Wynne has accepted, indeed as he said himself, entirely possible that the Claimant will decide not to attend on 28 May. If she decides not to attend on 28 May, then, as I understand it, and as Mr Wynne has put it to me, the overwhelming probability is that there will then be some kind of default judgment, and there will not be two ongoing parallel cases, with the potential for conflicting decisions in the two jurisdictions or the two courts because the criminal case will not be proceeding.
4. Then the interesting question would be what, if any, would be the effect upon my jurisdiction or my conclusions in hearing the matter, where one of the parties before me may have been found criminally liable in default, or in her absence, in respect of some part of the case. The question whether that would have any effect on my judgment would have to be decided, but it is not the same question as stopping two cases running in parallel.
5. So for both those two reasons, (a) because adjournment is not now being pursued today, and (b) because to decide today would be on a hypothetical question as to what is going to happen in the future, and therefore would be too early to say, the decision is academic.
6. Now, given therefore that the question I am being asked to decide by Mr Killen is of some importance, namely, the relationship between the offshore court's jurisdiction to hear civil cases and the onshore court's jurisdiction to hear criminal cases, where the two rub up against each other, and where an application for a stay is made either to offshore or onshore courts, on which side of the line that falls, that is an interesting and important question, and I am not prepared to decide that interesting or important question in a hypothetical case.
7. Therefore, for those two reasons, I am not proposing to do anything other than accept the application for an adjournment, which is of course an important one because it provides that it will not be renewed until after 28 May.
8. So I turn to the question of costs, and I will give both parties the opportunity to address me, but it should neither in any way be regarded as a case in which, because it has been adjourned, there are no costs implications, nor of course on the basis that because the Respondent has asked for



the adjournment, as Mr Wynne said, after listening to the views of the judge, that his client should in some way be mulcted for costs because it has asked for the adjournment.

9. So neither because it has asked for the adjournment and succeeded, nor because it has not pursued its original application and therefore should be mulcted because it has not done so, would that be the right answer.
10. In my view, there is a costs implication for the case having been brought today and been adjourned so that it cannot then be restored until after 28 May. It was the initiative of the Respondent to bring the claim and it has not in the end pursued it. I do not say it have lost it because it has not. So I would be minded to make an order for costs which reflects those factors.

#### Costs

11. I am going to assume, not least, Mr Wynne, because you did not take any particular objection to the fact that the costs were going to be round about \$40,000, that this has not been a cheap exercise, and it has resulted in a large gathering of parties, and it has resulted in there being no stay until, at any rate, after 28 May.
12. I take the view that this application was premature. It may well be that if and when an application is made to this court, contrary to Mr Killen's view, I would have the obligation to follow the authorities that have been drawn to my attention as being part of the court system of Abu Dhabi. It may be. But I have not decided that. I have simply decided that there should be no stay today because, as of now, there is no conflict between the two cases. Nothing is happening in the criminal case, and it may never happen until after 28 May, and that would have been the time, it seems to me, to bring the application.
13. Alternatively, that may be the time when it becomes quite apparent that in fact there should not be a stay because there will not be parallel proceedings. But whatever it is, the hypothetical will no longer be hypothetical come 28 May.
14. So I do not think there was a duty to bring the case, and I certainly do not think there was a duty to bring the case prior to 28 May, or until such time as there is then a conflict between two parallel sets of proceedings. But I have not resolved the issue against Mr Wynne or in favour of Mr Killen. Indeed, I have said that I consider it academic to do so, and therefore it would not be right for me to land the whole costs on the shoulders of the Respondent.
15. I propose to say that half the costs of having made this premature claim should be paid by the Respondent and that the other half should be costs in the case, and so will depend upon the eventual outcome of the action.



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16. I am not going in any way to make this contingent on such application being restored before me because this application may never be restored. It has simply been adjourned, and it cannot be restored prior to 28 May.
17. So I am making an order that the Respondent pay to the Claimant half the costs of the application, and that \$20,000 be paid within 14 days in respect of that Order for costs.

Issued by:



**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**1 May 2018**