محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,

Emir of the State of Qatar

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

Neutral Citation: [2022] QIC (F) 17

25 September 2022

CASE No. CTFIC0007/2022

BETWEEN:

ARWA ZAKARIA AHMED ABU HAMDIEH

Claimant

v

QATAR FIRST BANK LLC

Defendant

JUDGMENT

Before:
Justice Arthur Hamilton
Justice Fritz Brand
Justice Helen Mountfield KC

ORDER

1. The defendant shall pay to the claimant the sum of Six Hundred and Forty Thousand Qatari Riyals (QAR 640 000) as pecuniary damages.

2. The defendant shall pay to the claimant a further amount of Fifty Thousand Qatari Riyals (QAR 50 000) as non-pecuniary damages.

3. Failing payment in full of the foregoing sums within 21 days of the issue of this judgment the claimant shall further be entitled to recover from the defendant interest on any outstanding sums at the rate of 7% per annum from that date until payment.

4. The claimant is entitled to recover from the defendant such reasonable costs, if any, she has incurred in raising and pursuing this action, including such costs, if any, as she incurred in the summary judgment application, to be assessed by the Registrar if not agreed.

JUDGMENT

1. This is an action for damages. The claimant is Ms Arwa Zakaria Ahmed Abu Hamdieh, a Jordanian national who resides in the State of Qatar. The defendant is Qatar First Bank LLC, a Qatari company engaged in Islamic banking in the Qatar Financial Centre. In terms of an agreement entered into between the parties on 11 June 2020, the claimant was employed by the defendant as its Head of Legal and Compliance and its Board Secretary, with effect from 8 June 2020. The contract was for an indefinite period but subject to termination by either party on one month's notice in terms of clause 8.2. On 17 June 2021 the claimant was notified by the defendant, with reference to clause 8.2 of the agreement, that her employment would be terminated on 16 August 2021. It is accepted by the claimant that she received all benefits she

was entitled to on termination. Her complaint is that the defendant had failed to assist in the transfer of her sponsorship to her new employer, as she contends, it was obliged to do as her employer and thereafter her sponsor; and that in consequence, she was precluded from taking up her new employment offered to her in September 2021.

2. In substantiating her complaint, the claimant alleged in broad outline in her statement of claim, dated 2 February 2022, that:

(a) Although a No Objection Certificate (NOC) from the previous employer, indicating that they do not object to the transfer of sponsorship for employment and immigration purposes, is no longer a formal legal requirement for transfer of sponsorship to a new employer, the Ministry of Labour informed her that since the defendant had filed a letter of objection to her transfer, it had called for a NOC from the defendant as a precondition for transferring her sponsorship to her new employer.

(b) Initially the defendant refused to issue her with a NOC, but it was eventually persuaded to do so on 20 December 2021, through the intervention of its external counsel. But the Ministry also required the defendant's computer card in order to identify the signatory of the NOC as one of the defendant's authorised signatories registered with the authorities. The defendant then insisted that it would only provide her with the computer card in exchange for the computer card of her new employer, a condition it had no right to impose.

(c) Shortly after the termination of her employment with the defendant, her residence permit, also referred to as a Qatar Identity Document ("QID"), had lapsed. The authorities insisted that her sponsorship could only be transferred if she had a valid QID. But the defendant, who was the only entity capable of applying for the renewal of her QID, refused to

provide her with a renewed QID. Apart from the NOC, this was a second reason why her sponsorship could not be validly transferred to her new employer.

3. The defendant's response in its statement went along the following lines:

(a) The claimant received all service benefits she was entitled to upon termination of her employment and the defendant had no further obligations to her after her notice period ended.

(b) The defendant had done everything possible to facilitate the transfer of the claimant's sponsorship, but she had consistently failed to provide it with the identity of her new employer which rendered it impossible to provide her with a NOC.

(c) In any event, the claimant did not need a NOC for the transfer of her sponsorship to her new employer.

(d) The expiry of the claimant's QID did not preclude her from transferring her sponsorship to her new employer.

4. The relief sought by the claimant was essentially twofold. First, she sought an order directing the defendant to take all necessary steps to complete the transfer of her sponsorship to her new employer, which was identified by her as Professional Security Services Company, or to any other employer of her choice in case the new employment fell through. Secondly, she sought an order for payment of damages in an amount of QAR 440,000; as well as an order compelling the defendant to pay all government fines resulting from the delay in the renewal of her QID; and for emotional/moral damages in an amount of QAR 200,000.

5. Following upon the exchange of pleadings, the claimant brought an application for summary judgment seeking an order (a) under the first rubric for a mandatory interdict compelling the defendant to facilitate the transfer of her sponsorship and (b) for payment of the government fines resulting from the delay in the renewal of her QID, with her claim for damages to stand over for determination after a hearing in due course. The application for summary judgment was heard on a virtual platform on 25 April 2022. In the event, this Court gave judgment on 12 May 2022 essentially granting the mandatory interdict order sought, but directed that the claim regarding the payment of government fines should stand over for trial together with the claim for damages. Following upon this order and through intervention by the Enforcement Judge, despite vigorous resistance and obstacles raised by the defendant, the claimant eventually succeeded on 8 June 2022 in obtaining the documents necessary for the transfer of her sponsorship, including a NOC and the renewal of her QID by the authorities on application of the defendant. With regard to the fines levied for the late renewal of her QID, it turned out that these were paid by the defendant. Since no counterclaim was raised for the repayment of these fines, this left only the claims for damages outstanding for determination.

6. The damages claim was heard in open court on 27 and 28 June 2022. At the hearing, the claimant appeared in person while Ms Carine Farran and Ms Zouheir El Baba, both of the firm Badri and Salim El Meouchi LLP, appeared on behalf of the defendant. Four witnesses were called to testify at the hearing. The claimant gave evidence in support of her own case. Three witnesses were called on behalf of the defendant. They were Mr Johnny Al Khoury, Mr Mohammed Rael Mohammed and Mr Mohamed Abougahl. We shall deal with the evidence of Mr Mohammed and Mr Abougahl in due course in the context of the issues to which they testified. Mr Khoury's evidence on the other hand related to credibility only in that his testimony made no contribution to the determination of any issue of substance arising in the case. It arose from a statement by the claimant in her statement of claim that, after her request

for a NOC had initially been denied by the defendant, she eventually succeeded in obtaining the NOC "through the intervention of Mr Khoury as the defendant's external counsel".

7. This was denied by Mr Khoury. "I do not recall", so he testified, "that the claimant ever requested my intervention with the defendant to issue her a NOC and I confirm that such statements by the claimant are untrue". The question whether or not Mr Khoury was indeed asked to intervene turned out to be of little, if any, relevance. Quite understandably the claimant therefore indicated before Mr Khoury was called as a witness, that she would not rely on the statement in her claim form pertaining to him as part of her case. Nonetheless the defendant's counsel insisted in calling him in an obvious attempt to impugn the claimant's credibility. That attempt turned out to be unsuccessful in that Mr Khoury did not impress us as a witness at all.

8. By contrast we find the claimant to be a truthful and measured witness. We shall require to return in due course to some of the detail of her evidence. However, at this stage we find it appropriate to say that insofar as there was any conflict between her and the defendant's witnesses on any issues of fact, we prefer the claimant's evidence. The defendant's suggestion that the present proceedings were brought by her to extract further monies from it we find wholly without foundation. They arose, as we see it, from a genuine concern on her part that the defendant was not fulfilling its responsibilities to her as its sponsored employee, and her concern that this prevented her, in practical terms, from moving on and commencing work with another employer. (Her evidence was that she had an offer of such employment but could not take it up without an NOC permitting her transfer of sponsorship to occur).

9. The issues arising in these proceedings are to be understood against the background of our judgment of 12 May 2022, in the summary judgment application ("the earlier judgment"). The pivotal issue which we decided in the earlier judgment was that, despite the defendant's contentions to the contrary, an employer was under a duty by virtue of article 10 of the QFC Employment Code, which earlier authority has established is binding on entities operating in the QFC (a) to take all steps necessary to permit the transfer of the claimant's sponsorship to her new employer; and (b) that this obligation extended beyond the termination of her employment contract. Thus, we had decided that in general an employer had an obligation to take the practical steps required to enable her sponsorship to be transferred to an employer of her choice, and the balance of convenience required us to order the taking of those steps on an interlocutory basis, ahead of the full trial of contested issues of fact. In the light of those findings, we ordered the defendant to do all that which was necessary to assist the claimant in her transfer of sponsorship to a new employer, which, in the light of the judgment, albeit under protest, the defendant did. We have proceeded, for the purposes of this hearing, on the basis that article 10 of the QFC Employment Code was binding on the defendant, and imposed post-employment duties while the defendant remained the claimant's sponsor. Even if we were in a position to deviate from those findings of law, which we believe we are not, no persuasive reasons have been presented in these proceedings for us to do so. But, in issuing an interlocutory judgment compelling the defendant to comply with these obligations in terms of the earlier judgment, this Court did not decide the issue, now pivotal to the damages claim, as to whether the defendant was in culpable breach of these duties. In fact, this Court expressly and consistently refrained in the earlier judgment from doing so. It is that issue which we addressed, on the basis of the evidence before us, in this hearing.

10. Chronologically the first alleged breach by the defendant relied upon by the claimant is that it had failed to apply for the renewal of her QID after it had expired on 3 September 2022. The factual background to the claimant's complaint appears from the following exchange of emails between the parties:

(a) On 22 September 2021 the defendant's representative, Ms Sheeba Matthew, asked the claimant:

"Can you please update us on the sponsor transfer. If you need clarification on the transfer documents, please feel free to contact us."

(b) The claimant responded on the same day:

"Please share copies of the CR [computer record] and computer card. My QID needs to be renewed before the forms are prepared."

(c) On 30 September 2021 Ms Matthew wrote:

"Please send us your new employer CR and computer card and copy to send you ours."

(d) On the same date, the claimant responded:

"I'll request the documentation and send them across as soon as I receive them. In the meantime, the QID has to be renewed as the transfer can't happen with an expired QID. Please advise when that can be done."

(e) On the same day, Ms Matthew replied:

"The transfer can be done with an expired QID. We are not liable for renewing your QID."

(f) On 1 November 2021, the claimant wrote:

"As discussed in our call today, my new employer checked with the immigration department twice and they got feedback that the QID has to be received before transfer. Let me know how this can be resolved as I would like to finalise the transfer asap."

(g) To which Ms Matthew tersely responded on 2 November 2021:

"Upon checking with our government relations officer, please note that the below information is not correct."

11. That appears to have ended the exchange, which left the claimant without the QID demanded by the Ministry as a precondition for its approval of the sponsorship transfer. The defendant's first answer to this part of the claimant's case is that a valid QID was not necessary for the transfer of her sponsorship until mid-November 2021. In support of this answer the defendant relied on article 65 of the Executive Regulations to the (Qatar state) Immigration Law, which provides in relevant part:

"The change of employer is subject to the relevant applicable laws and regulations and in accordance with the following requirements:

1. ...

2. The QID of the expatriate being valid, or within 90 days from the date of its expiry ..."

12. In accordance with the construction of article 65 contended for by the defendant, the claimant had 90 days from 3 September 2021 when her QID expired to transfer the sponsorship without a valid QID. We do not agree with this construction of article 65. As we see it, the claimant did, as a matter of law, require a currently valid QID to complete her transfer of sponsorship and could not acquire one on her own unsupported application. But even if the defendant's argument based on its interpretation of article 65 were to be accepted as correct, the undisputed evidence of the claimant was that government officials sometimes assume a discretion to demand documents which are not strictly required by statutory enactments; and that if they do, there is no obtaining a transfer document until the documents requested have been supplied. This, she said, is what happened in this case. As we see it, the solution to the problem for transferring employees thus arising, is this: on a proper interpretation of article 10 of the QFC Employment Code, it not only requires the transferring sponsor/employer to do what is strictly demanded by law, but to take all reasonable steps which are practically required to facilitate the transfer of sponsorship. If the government department concerned therefore requires something to be done in order to approve the transfer of sponsorship, the employer is duty bound to take all reasonable steps within its power to satisfy those requirements, even if those requirements do not derive from regulations or other statutory enactments.

13. Any alternative construction of article 10 would place the employee in the following untenable position. The government official would require something not strictly provided for in any law. The employer would refuse to comply with the request albeit within its power to do so, because it is not strictly required by law. The employee would be between a rock and a hard place. Theoretically the employee would probably be entitled to seek a *mandamus* from the courts against the government official. But to insist that the employee should pursue that option would, in our view, not only be impractical, it would be unreasonable and unfair towards the employee, who might well lose their immigration status before being able to pursue such

an application. That is why we construe article 10 as meaning that the employer's duty to assist in the transfer of sponsorship is not confined to that which is strictly required by law but to take all reasonable steps within its power to advance that goal. As we understand the legal representatives of the defendant in argument, they fairly conceded that this must be the right interpretation of article 10.

14. In this light, the answer raised by the defendant in correspondence and again as a defence in this Court, that in accordance with the applicable legislation, a valid QID was not strictly required by the provisions of the law for the transfer of sponsorship, is not a valid one.

15. The further defence raised by the defendant in this regard was that it was not even entitled to apply for the renewal of the claimant's QID. The starting point of its argument in support of this defence was in QFC Immigration Regulation 11(5), which provides that the employer – and only the employer – can apply for the renewal of a QID. In September 2021, so the argument went, the parties were no longer in an employer/employee relationship. That relationship had been terminated in August. In consequence the defendant was no longer in a position to apply for the renewal of the claimant's QID. The flaw in the argument, as we see it, is that on our interpretation, the duties imposed by article 10 upon the employer for the purposes of transferring sponsorship extend beyond the termination of the employment contract. Stated somewhat differently, sponsorship and employment are not the same. Although the obligations of the employer as employer terminate with the employment contract, its duties as transferring sponsor which arise from the former relationship of employment do not. This interpretation, as we see it, is consistent with article 7 of the QFC Employment Code which provides that "*The employer is responsible for any employee it sponsors until such time as the sponsored employee either (a) departs the State, or (b) the employee's sponsorship is transferred to another employer in the State, whether in the QFC or outside the QFC*".

16. Any contrary construction of the multitude of regulatory provisions that may find application, would again place the employee in an untenable position if his or her QID lapses during the process of transfer, and if, as they did in this case, the authorities insist on a valid QID for the transfer of sponsorship. The new employer/sponsor would not yet be in a position to apply for an extension of the QID. Employees themselves are not in a practical position to do so. The only entity to do so would be the transferring sponsor. The fact that the defendant was indeed in a position to apply for the renewal of the claimant's QID, despite the termination of her employment, is also borne out by the fact that it in fact successfully did so in June 2022. The answer given by the defendant's counsel in argument that the defendant did so illegally because it was ordered to do so by this Court cannot be accepted. [This Court never could, did not, and could never have been reasonably understood by anyone, to order the defendant to do anything that would be against the law.] There was no other reasonable excuse for failing to renew the claimant's QID upon her request. Hence, we find that the defendant acted in breach of its duty towards the claimant when it refused to apply for the renewal of her QID in September 2021 when she requested it to do so.

17. This brings us to the NOC. The claimant's evidence in this regard, which we accept, is that she was due to start her new employment at the beginning of September 2021. The new employer started the process of transferring her sponsorship at the end of August 2021. In consequence of the Covid-19 pandemic, the Qatari authorities simplified the transfer process which enabled her new employer to apply to the Ministry of Labour through an online system. On 16 December 2021 the new employer was however informed by the Ministry of Labour for the first time that the transfer of her sponsorship could not proceed because the defendant had submitted an objection to the transfer. The Ministry refused to provide her new employer with a copy of the objection, but indicated that her problem could be resolved by an NOC which

would by implication remove the defendant's objection to the transfer. It is common cause between the parties that a NOC is no longer demanded by statute.

18. That much was also confirmed by the Commissioner of the Employment Standards Office, Luigia Ingianni, who helpfully assisted by giving evidence, at the request of the Court, with regard to elements of Qatari employment law in general. In accordance with the kafala system which previously existed, so Ms. Ingianni testified, sponsorship could only be transferred with the consent of the former employer. But that system had been abolished in 2020. Accordingly, the whole process of transfer is now left to the employee. A NOC by the former employer is no longer a requirement. Hence the claimant's inference that the NOC was required by the Ministry in this case to serve as an implied withdrawal of the defendant's earlier objection to her transfer.

19. In consequence, the claimant contacted the defendant who denied that it had filed an objection to the claimant's transfer. Eventually and reluctantly it then provided the claimant with a NOC dated 20 December 2021 which reads, according to the interpretation by the Court interpreter from the original Arabic: – *'You* [the Department of Labour] *are kindly requested to approve the change of employer for* [the claimant] *whereby her sponsorship under Qatar First Bank be transferred to any other employer's sponsorship she may wish to work for…"*

20. The NOC was valid for 30 days. But to accept the NOC, the Ministry also required provision of a computer card showing the names of the defendant's authorised signatories so as to establish whether the individual who signed the NOC was indeed authorised to do so on behalf of the defendant. When the claimant requested the defendant on 2 February 2021 to furnish the computer card, Ms Sheeba Matthew responded on its behalf that "*We are happy to share the QFB computer card with you. Please send us your new employer computer card to*

send your QFB CC copy". The claimant's answer to the condition thus imposed was "*As I already stated to you earlier this odd request has nothing to do with the transfer process and isn't aligned with the regulations, particularly an employer's responsibility is and firms' code of conduct under the QFC rules. Kindly provide the copy at the earliest, otherwise I will unfortunately have to take action against the firm*". To this Ms Matthew responded on 3 February: "*We are happy to assist you in your transfer of sponsorship and share QFB computer card. However please note as per the company policy and for the record it is important to receive the computer card copy of the new employer (company where the employee is transferring their sponsorship). Therefore we request you to please share with us your new employer CC copy*".

21. The defendant does not rely on any statutory provision for its insistence that it would only provide its computer card in exchange for the computer card of the claimant's new employee. It relies on company policy. However, we see no legitimate reason for such a policy. The identity of the body to whom the claimant might be transferring was irrelevant to it. In any event the claimant, who was the head of the defendant's legal department, denied that such policy ever existed, and the defendant did not produce any document evidencing the existence of such a policy. At the earlier hearing of the summary judgment application on 25 April 2022, the defendant's then legal representatives – unrelated to the El Meouchi firm who appeared for it at the trial - advanced a reason for this policy which is recorded in paragraph 17 of the earlier judgment. The reason thus recorded was that it arose from the defendant's concern that the departing employee may take up employment with another bank or similar entity operating in competition with it in contravention of the post-termination restrictive covenant in the employment contract. It therefore wanted to hear the identity of the prospective transferee of the sponsorship so that it was alerted to the nature of its business and enabled to guard against a breach of the covenant. In the earlier judgment, we indicated that this reason

may constitute an ulterior motive, possibly in restraint of trade, and could therefore constitute an illegitimate reason for the defendant's refusal to comply with its obligations under article 10 of the QFC Employment Code.

22. At the trial hearing on 27 June 2022 Mr Mohammed Mohammed, who was the defendant's head of human relations at the relevant time, again insisted on the existence of the policy. According to Mr Mohammed this policy was already in existence when he joined the defendant on 2 February 2020. He denied however that the reason for the policy was the one given by the defendant's erstwhile legal representatives at the earlier hearing. Where the legal representatives got that explanation from, he did not say. In our view the prospect that the legal representative would pluck the explanation from the air, is highly unlikely. Mr Mohammed testified that the true reason for the policy, was that the defendant was not able to provide a NOC without knowing the identity of the new sponsor. In our judgment, there are two reasons for rejecting this explanation. First, the defendant would not need the computer card merely to establish the identity of the proposed new employer. Secondly, it is in conflict with the fact that the NOC issued by the defendant on 20 December 2021 did not mention the name of any new employer. On the contrary it pertinently consented to the transfer of the claimant's sponsorship "*to any other employer's sponsorship she would wish to work for*". We have another difficulty in accepting the validity of Mr Mohammed's version. The existence of the policy was in dispute from the outset. The claimant pertinently denied that it ever existed. According to Mr Mohammed the policy is reflected in an internal document. Nonetheless the defendant had failed to disclose this document at any time. In cross-examination Mr Mohammed was unable to give any plausible reason for this non-disclosure. In the circumstances we accept the claimant's version that the defendant had no such policy. But even if it did, no acceptable reason was advanced for the existence of such policy, and we do

not consider that it constituted a valid reason for refusing to provide a computer card without first receiving the computer card of the intended new employer.

23. It follows that in our view the claimant had succeeded in establishing a culpable breach by the defendant of its duty imposed by article 10 of the QFC Employment Code in two respects:

> First, by its failure to assist the claimant in the renewal of her QID when requested to do so in September 2021; and
>
> Secondly, by its failure to provide the claimant with its computer card which was insisted on by the Ministry of Labour, at the beginning of February 2022, as a result of which the NOC provided was of no avail to the claimant.

24. This brings us to the element of causation. The defence raised by the defendant in this regard is that, whether or not it was in breach of Article 10, in any event any wrongful conduct on its part was not the cause of the claimant's inability to transfer her sponsorship. The real cause of her inability to do so, the defendant contended, was that transfer of any sponsorship to her new employer had been blocked by the Minister of Labour as a result of its failure to settle the salaries of its employees. In support of this defence, the defendant relied in the main on the evidence of Mr Mohammed Aboughal, who is employed by the defendant as its Government Relations Officer. On 17 May 2022, so Mr Aboughal testified, he visited representatives of the Wage Protection System (WPS) at the Ministry of Labour to investigate the allegation that the defendant had filed an objection to the claimant's transfer. He was then expressly told orally by an employee of the Ministry that the claimant's new employer "*has been blocked by the Ministry on the system and is still blocked to date due to the new employer's failure to settle its employees' salaries and that this is the reason why the claimant is being prevented from transferring her sponsorship to a new employer*".

25. According to Mr Aboughal, he again visited the Ministry on 29 May 2022 when an employee of the Ministry confirmed to him that the claimant had sought to transfer her sponsorship three times, twice in November 2021 and once in January 2022 but that she was unsuccessful because the new employer was blocked on the WPS. Mr Aboughal further testified that he had tried on many occasions to obtain written evidence from the Ministry but that, while it expressly confirmed the existence of the documents, it was not prepared to give these documents to him. The claimant's answer to these allegations was that she was never informed and that she had no knowledge of any alleged block imposed against her new employee.

26. In considering this evidence we would find it surprising if transfer to the new employer was indeed blocked on the system, that the Ministry would not inform the claimant of the true cause of her problem. Why, one would rhetorically ask, would the Ministry not tell the claimant that all her efforts to get the necessary documents from the defendant were in vain because her problems lay elsewhere? But more importantly, this evidence clearly constitutes a classic example of hearsay; regardless of whether or not this is admissible in this jurisdiction (which we do not need to determine for the purposes of this claim), we afford little weight to this indirect evidence of what it is said was said by an unnamed official. Realising its problem in this regard, an attempt was made by the defendant to introduce this evidence through an application on 16 June 2022, just before the listed hearing date. The relief sought in the application was for an order by this Court directing "(a) *a representative of the Ministry of Labour; (b) a representative of Professional Security Services Company LLC, being the claimant's new employer; and (c) a representative of the immigration office of the QFC to attend before it on 27 June 2022 to provide the court with evidence including the following:*". There were then specified a number of areas of dispute, most, although not all of which had been in issue between the parties for some time.

27. Included amongst the directions thus sought was the following:

(a) that the Court "*direct a representative of the Ministry of Labour to testify at the hearing*," and

(b) "*to deliver evidence prior to the hearing, regarding notably: (i) whether any notice or objection was filed by the applicant against the claimant, obstructing the transfer of her sponsorship; (ii) whether Professional Security Services Company LLC was blocked on the WPS from sponsoring any new employees for failure to settle its employees' salaries; and for what period; (iii) whether it sent any messages and informed the claimant and the alleged new employer that the latter's status was blocked at the Ministry of Labour; and (iv) the date at which the claimant first filed/initiated her transfer process at the Ministry of Labour*".

28. The case was, by order dated 12 May 2022, set down for hearing on Monday 27 June 2022. No reason was given by the defendant why the application was only brought on 16 June 2022, nor was there any indication as to what steps, if any, the defendant had taken to identify in advance which individual or individuals within each of the entities would be best placed to give relevant evidence on these issues or to ascertain whether any of such individuals would be willing to attend the Court voluntarily for that purpose. The entities from which representatives were sought included public authorities which might, on grounds of privilege, have had objections to attending or to providing the documentation.

29. By the time the application was made, there was no prospect of convening a preliminary hearing to address and resolve any such objections. The hearing itself, which was set down for a single day, would have been seriously disrupted had the Court required to consider any such

objections on that day before proceedings to the substance of the case. The claimant herself would have had no proper opportunity to consider, in advance of the hearing, any documentation or oral testimony which might be produced by this process and accordingly might justifiably have objected on grounds of fairness to its late receipt. In any event, we do not consider we had authority to 'order' ministry officials to attend a hearing at our behest, when they are outside the jurisdiction of the QFC.

30. In this light the Court decided that it was not in the interest of justice that the application be granted. It came far too late. It is for parties to marshal in good time the evidence on which they wish to rely. Where it is necessary to enlist the assistance of the Court in adducing evidence, whether oral or documentary, a party seeking such assistance should take appropriate steps timeously. The defendant did not do so. It may be noted that no explanation was tendered for the lateness of the application nor was any application made to adjourn the hearing.

31. The result of it all is that there is no convincing evidence to refute the conclusion contended for by the claimant that, but for the culpable breach of duty by the defendant, the claimant would have been able to take up her new employment. The question is when would she have been able to do so? On the application of the so-called "but -for" test for causation, we believe the answer to this question is that on the probabilities, this would have happened when the claimant could renew her QID, but for the defendant's wrongful refusal to assist her in her efforts to do so. It is likely that, had this occurred, she would not have had to get an NOC, and so the problems with the computer card would have fallen away. Had the defendant acted with reasonable diligence, the claimant would with a renewed QID have been able to take up her intended new employment by early October 2021. In the event she received that QID in early June 2022. Thus, about eight months of remunerable employment were "lost. "

32. That brings us to the quantum of the claimant's damages. According to her witness statement the claimant formulated her claim on the following basis:

"31. Since I remain legally under the defendant's sponsorship, the financial loss that I suffered can be quantified by the loss of the income and benefits I was entitled to under the contract with the defendant and their HR policy. Although my contractual relationship with the defendant ended on August 18 2021, I remain legally bound with the defendant through their sponsorship as per the Immigration Regulations. This legal bound won't sever until the sponsorship transfer is completed.

32. During the period from September 2021 to the date of filing this witness statement on May 29 2022 I lost the monthly salary I am entitled to in accordance with the contract with the defendant which amounts to QAR80,000 per month. The total lost monthly salaries to this date amounts to QAR640,000. That amount increases each month by QAR80,000 the defendant continues to transfer my visa to the new employer.

33. Also, during this period I lost other important benefits like schooling fees that I am entitled to in accordance with my contract with the defendant which I paid annually and amounted to QAR45,000 as the amount was increased during the year 2021 as per the defendant's updated HR policy which I assisted the HR department in drafting and facilitating its approval by the Employment Standards Office at the QFC.

34. I also lost the annual business tickets for myself and my family that I was entitled to in accordance with my contract with the defendant which I paid in cash and are valued at approximately QAR16,000".

33. Accordingly, the claimant's calculation of her damages started out from the premise that she is entitled to the income and benefits by analogy with the sums which she would have earned from her employment with the defendant during the relevant period, because the evidence which she had adduced before us demonstrated that that was the rate she could command in the employment market. On that basis she formulated her claim as follows in her final submissions (at 445):

"2. The total amount of damages claimed for the financial loss and emotional harm suffered by the claimant as per the claimant's witness statement amounts to QAR1286,000 which includes the following:

(a) loss of monthly salary amounting to QAR640,000;

(b) loss of educational allowance in the amount of QAR45,000;

(c) loss of annual tickets for self and family in the amount of QAR16,000;

(d) loss of private healthcare insurance coverage in the amount of QAR35,000;

(e) loss of performance bonus in the amount of QAR350,000;

(f) *damages in the amount of QAR200,000 for the emotional harm caused by the defendant's refusal.*"

34. The defendant's answer to the claim thus formulated is in essence that it applies the wrong measure of damages. Even though the defendant's obligations as sponsor might have continued, so the defendant's argument went, its obligations under the contract of employment did not. Those obligations came to an end when the employment contract was terminated.

35. We agree with the defendant's approach to the measure of damages. We also agree with the defendant's further argument that the correct measure of the claimant's damages would be the salary and benefits that she would have earned from her new employment during the period of her loss. That would clearly be the best evidence to establish her loss of income. Indeed, this was common ground, because in argument, the claimant conceded that this is so. Her practical problem was however, so she testified, that her new employer precluded her from disclosing her salary and benefits under her new employment contract. We have no reason to doubt the veracity of this version. In fact, it is supported by the defendant's own request that the salary which the claimant earned while employed by it should not be made public, which appears to present a general picture of secrecy in matters of this kind.

36. But this gives rise to the question whether this lack of direct evidence regarding the claimant's loss of income means the end of her case: whether this should non-suit her completely. We believe not. That would be highly unfair. In the circumstances the Court must do the best it can in the light of the evidential material available to it to determine an amount which is just and fair to both parties.

37. Apart from the income that the claimant earned from the defendant, she introduced evidence of her employment with her two previous employers in evidence. The first of these contracts was concluded on 5 June 2016 and the second on 26 August 2019. What appears from these contracts is that the salary she earned from her two previous employers were more or less on a par with the salary she received from the defendant. With regard to the other benefits claimed by the claimant it appears however that they are not comparable to those she received from her two previous employers. Hence, we think that unlike her actual salary, these additional benefits cannot be said to form part of the standard level of remuneration that the claimant could expect to earn from her notional new employer. Moreover, a number of the additional benefits claimed by the claimant were paid to her on an annual basis while her performance bonus would obviously be subject to the discretion of her employer. Accordingly, it would not constitute a source of income she could claim as of right. In the circumstances, the claimant succeeded in establishing damages in respect of loss of earnings in an amount of QAR 640 ,000 (i.e., eight months x QAR80,000).

38. As to the claim for non-pecuniary damages, or 'moral damages', in the form of compensation for emotional harm, the defendant conceded that in principle, emotional anxiety and stress would constitute a recoverable head of damages in our jurisdiction. We believe the concession was rightly and fairly made. Article 10 of the Regulations and Procedural Rules, which defines the jurisdiction of this Court, focuses its limitations on remedies as opposed to causes of action. Hence Article 10.3 affords us jurisdiction "to grant all such relief and make such orders as may be appropriate and just …" while article 10.4.3 expressly contemplates an award of damages. The QFC Law, which governs the determination of the dispute, does not expressly refer to this kind of damages, but at the same time it does not preclude an award of this nature. Article 100 of the QFC Contract Regulations, which restricts damages to those arising directly from the breach or within the reasonable contemplation of the parties, clearly

does not preclude a claim for non-pecuniary damages which satisfies these requirements. Qatar National Law, which is the closest analogy, expressly recognises non-pecuniary or moral damages in terms of Article 202 of the Civil Code.

39. The defendant's answers to the claim were twofold: (a) that no such emotional damage has been established in this case; and (b) that in any event, the amount claimed is excessive and out of proportion. We do not agree with (a). The claimant's compelling evidence was that she suffered emotional stress and anxiety through the defendant's wrongful conduct. In support of this averment she referred, inter alia, to her fear of being detained and deported as an illegal immigrant and the fear that she and her dependent child might be compelled to leave Qatar with an unknown financial future. Not only is there nothing to gainsay this evidence, but the claimant's account of humiliation and stress that she suffered seems to accord with the inherent probabilities. As to answer (b), we believe the correct approach in this jurisdiction is to draw an analogy with the approach in many other jurisdictions, where awards for non – pecuniary damages are confined to moderate amounts. After all, they are aimed at solace and consolation rather than compensation. The recognised approach is that the amount should not be so low as not to indicate disapproval, but nor should it be disproportionate to damages awarded for actual injury. In all the circumstances we believe an award of QAR 50 000 under this heading will be fair. So, that is the amount we award.

By the Court,

[signed]

Justice Fritz Brand

A signed copy of this Judgment has been filed with the Registry

Representation:

The Claimant represented herself.

The Defendant was represented by Ms Carine Farran and Ms Zouheir El Baba, both of the firm Badri and Salim El Meouchi LLP, Doha, Qatar.