

Document 3: Court of Appeal Judgment (Civil)

ABU DHABI COURT OF APPEAL CIVIL CIRCUIT

Appeal Case No: 2024/Civil Appeal/0324 **Date of Judgment:** April 12, 2024

PARTIES:

- **Appellant:** National Construction Company LLC
- **Respondent:** Abu Dhabi Investment Authority (ADIA)
- **Original Court:** Abu Dhabi Court of First Instance

PANEL OF JUDGES:

- **Presiding Judge:** Hon. Judge Dr. Fatima Al-Mansouri
- **Member Judge:** Hon. Judge Abdulla Al-Kaabi
- **Member Judge:** Hon. Judge Mariam Al-Shamsi

APPEAL FROM: First Instance Judgment No. 2023/Civil/2148 dated December 15, 2023

ORIGINAL DISPUTE: Construction contract dispute regarding Al-Reem Island development project - claimed amount AED 45,000,000

APPELLANT'S GROUNDS OF APPEAL:

1. **Legal Error:** Misapplication of Article 872 of Civil Transactions Law regarding contractor's obligations
2. **Factual Error:** Incorrect assessment of delay damages and force majeure circumstances
3. **Procedural Error:** Improper evaluation of expert evidence regarding project timeline
4. **Damages Assessment:** Erroneous calculation of compensation amounts

COURT'S ANALYSIS:

First Ground - Legal Error: The Court of Appeal finds that the First Instance Court correctly applied Article 872, which states: "The contractor shall be liable for any defects in the work performed, whether arising from defective materials or faulty workmanship, unless such defects result from force majeure or act of the employer."

The evidence clearly established that construction delays resulted from Appellant's failure to procure materials within contractual timeframes, not from force majeure events.

Second Ground - Factual Error: Upon review of case files and expert testimony, this Court confirms that:

- Weather delays claimed by Appellant were within normal seasonal parameters
- COVID-19 impacts cited occurred after the original delay commencement
- Appellant failed to invoke proper contractual procedures for extension of time

Third Ground - Procedural Error: The expert report submitted by Eng. Khalifa Al-Zaabi was properly qualified and his methodology sound. The First Instance Court was entitled to rely upon his findings regarding critical path analysis and delay attribution.

Fourth Ground - Damages Assessment: The calculation of AED 32,500,000 in damages was based on:

- Proven extended site establishment costs: AED 8,500,000
- Additional financing costs at agreed rate: AED 12,000,000
- Lost rental income from delayed completion: AED 12,000,000

This assessment was properly supported by documentary evidence and expert valuation.

COURT'S DECISION:

The Court of Appeal hereby:

1. **DISMISSES** the appeal in its entirety
2. **CONFIRMS** the First Instance judgment dated December 15, 2023
3. **ORDERS** the Appellant to pay appeal costs of AED 15,000
4. **UPHOLDS** the award of AED 32,500,000 plus legal interest at 5% per annum from date of original judgment

REASONING: The First Instance Court properly applied relevant legal principles, correctly evaluated evidence, and reached conclusions supported by the record. No reversible error has been demonstrated.

ENFORCEMENT: This judgment is final and immediately enforceable. No further appeal is permitted except to the Court of Cassation on points of law only, within 60 days, for claims exceeding AED 200,000.

ISSUED IN OPEN COURT April 12, 2024

PANEL SIGNATURES:

- Hon. Judge Dr. Fatima Al-Mansouri (Presiding)
- Hon. Judge Abdulla Al-Kaabi
- Hon. Judge Mariam Al-Shamsi

COURT REGISTRY SEAL Abu Dhabi Court of Appeal