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# The Dubai International Financial Centre

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## Miran v Motab [2023] DIFC SCT 213

November 16, 2023 SCT - JUDGMENTS AND ORDERS

**Claim No. SCT 213/2023**

### THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

**In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai**

**IN THE SMALL CLAIMS TRIBUNAL  
BEFORE H.E. JUSTICE NASSIR AL NASSER**

**BETWEEN**

**MIRAN**

Claimant

and

**MOTAB**

Defendant

Hearing : **17 July 2023**

Judgment : **16 November 2023**

### JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

**UPON** this Claim having been called for a Hearing before H.E. Justice Nassir Al Nasser on 17 July 2023

**UPON** reviewing the Expert Report issued by Mr Mehin on 11 September 2023

**AND UPON** reviewing the parties' submissions on the Expert Report on 18 and 19 September 2023

**AND UPON** reviewing all evidence filed and recorded on the Court file

**IT IS HEREBY ORDERED THAT:**

1. The Defendant shall pay the Claimant the gross profits attributable to the infringement committed by Murun in the amount of **AED 14,223.99** which was generated from 1 April 2021 to 31 March 2022.
2. The Claimant was successful in establishing that the Defendant was liable to implement and enforce the decision issued by the Saudi Court of First Instance. As such, the Defendant shall repay the Claimant's cost of **AED 7,500** which was contributed toward the appointment of the expert.
3. The Defendant shall pay the Claimant the Court fees in the sum of **AED 711.19**.

Issued by:  
**Hayley Norton**  
SCT Judge and Assistant Registrar  
Date of issue: 16 November 2023  
At: 3pm

**SCHEDULE OF REASONS****The Parties**

1. The Claimant, Miran (the "Claimant") is a producer of musical pieces which are typically performed by variety of artists, the Claimant nonetheless retains the full and exclusive ownership of any artistic works and content produced by him. The Claimant's primary objective in these proceedings is to recover its financial rights from the Defendant.
2. The Defendant, Motab (the "Defendant") is a freezone limited liability entity established in Dubai, licensed to manage, distribute digital content and to carry out other music and entertainment activities within the UAE.

**Background and the Preceding History**

3. This is a Claim for the recovery of net profits which were purportedly generated as a result of a copyright infringement breached by the Defendant in connection with the Claimant's production of artistic works.
4. Thereby, the Claimant's Claim does not seek to protect the value of its intellectual property, rather it is plainly a quantum issue over which the Court will need to determine the profits produced as a result of the infringement, being the alleged unlawful distribution of the music created and owned by the Claimant on various digital platforms.
5. In this short reasoning, the Court will only determine the calculations of profits that had been generated as a result of distributing the Claimant's digital content on digital platforms. The rationale behind this reasoning is based on the fact that the issue of liability has prevailed in the Courts of Saudi Arabia, thereby this Court will not determine if there has been a copyright infringement, as this matter had already been resolved, as such it will not be reopened or re-adjudicated.
6. The legal issues giving rise to this Claim will be addressed in detail below, however I will summarise those factual matters which are relevant to this Claim. I have carefully reviewed the parties' submissions including the oral submissions made at the Hearing, if I omit to reference an argument that had been relied on this does not mean that it has been overlooked or not considered.

**The Saudi Proceedings**

7. The procedural history leading up to this Claim is straightforward and the relevant facts will be chronicled as follows:

8. The Claimant commenced proceedings in the Courts of Saudi Arabia against the artist Mr Murun (hereinafter will be referred to “Murun”) seeking to protect the value of its intellectual property and to recover monetary damages as a result of the copyright misappropriation. On 5 June 2021, the Saudi Court of First Instance ruled in favour of the Claimant on the issue of liability, as part of its findings, the Saudi Courts found that Murun violated the Claimant’s copyrights values, required Murun to delete all songs produced and created by the Claimant to be deleted from any digital platform application and it required Murun to pay a fine to the Saudi Courts. The Claimant was unsuccessful on the issue of quantum (the “Judgment”).

9. On 7 July 2021, as a result of the Judgment, the Defendant wrote to the Claimant and Murun by way of an email in recognition of the parties’ rights to appeal or set aside the Judgment. As such, the Defendant submitted that pending a full and final decision from the Saudi Courts resolving and deciding on all issues in dispute, namely liability and quantum, the Defendant, in the interim, would temporarily withhold enjoining any revenue to Murun. However, the Defendant refused to demand any digital platform to delete any of the songs produced by the Claimant and sang by Murun pending a full and final judgment from the Appellate Courts of Saudi Arabia.

10. On or around 30 March 2022, the Appellate Saudi Courts upheld the ruling of the Court of First Instance. Following the ruling of the Appellate Courts, the songs subject to this dispute were deleted from all digital platforms, the revenue generated from the Claimant’s artistic works were repaid to the Claimant, and the songs were transferred to the Claimant’s channel, namely Al Othman Establishment. This is strongly rejected by the Claimant.

11. On 19 January 2022, the Claimant entered into a contract with the Defendant for the licensing and management of its digital content. The agreement effectively granted the Defendant the right to manage, digitally distribute the songs subject to the dispute and to collect all profits generated from the distribution of the songs transferring the agreed apportion of the revenue to the Claimant’s account (the “Agreement”).

12. On 10 March 2023, the Defendant terminated a licensing and digital content agreement with the singer Murun (Murun). Murun was contracted to perform the artistic songs produced by the Claimant which were delivered to the Defendant for their distribution generating profits for the Defendant.

13. On 19 October 2023, the Registry issued directions on behalf of the Court directing the Defendant to provide a statement of account reflecting the profits generated as a result of Murun’s infringement starting from the date the Court of First Instance issued its decision to the date the Appellate Courts upheld the Court of First Instance’s ruling.

14. On the 20 October 2023, the Defendant provided a statement of accounts reflecting gross revenue for a total of AED 14,223.99 generated from 1 April 2021 to 31 March 2022.

## **DIFC Proceedings**

15. The Claimant submits that if the Court were to find in its favour on the issue of quantum, the gross revenue attributable to the infringement should start from when the Court of First Instance issued its decision, June 2021. Further, the Claimant contends that since the issue of liability had prevailed, the ruling of the Saudi Court of First Instance is enforceable and the Defendant’s failure in postponing the implementation of that ruling pending a final outcome from the court of appeal is wrong.

16. In response, the Defendant challenges this submission contending that it was not bound by the decision of the Court of First Instance, until that ruling became conclusive, as such, if the Courts were to award damages in favour of the Claimant, it must be calculated from the date the



Appellate Court made its final ruling on the issue of infringement disputed between the Claimant and Murun.

### Discussion and analysis

17. I will deal briefly with the governing law and jurisdiction before turning to the live issue of this Claim. It should be noted that the jurisdiction of the DIFC Courts and the governing law is not disputed between the parties, I rely on clause 11, paragraph B of the Agreement, noting that the parties agreed that the contract will be regulated and governed in accordance with the laws of the DIFC submitting to the exclusive jurisdiction of the DIFC Courts to settle any disputes or matters arising from that Agreement.

18. Turning to the primary question of this case being “when in particular” was the Claimant entitled to the dividends that had been generated as a result of Murun’s breach of the Claimant’s exclusive rights granted under the Saudi Copyright Law. As mentioned above, the Claimant submits that his entitlement should effectively run from the date of the Judgment of the Saudi Court of First Instance, where he successfully established that Murun was in breach of the Saudi copyright laws.

19. It is undisputed that the Defendant failed to comply with the Judgment and showed no willingness to do so, in support of my analysis, I rely on the Defendant’s letter of 7 July 2021 addressed to the Claimant and Murun which plainly states that the Defendant is not compelled to adhere to a ruling issued by a Court of First Instance based on their belief that the Judgment was not full and final. Thereby, the Defendant’s approach on the issue of enforceability was associated with the mistaken belief that a Judgment issued by a lower court is not enforceable and as a result the Defendant deciding that it was not necessary to adhere to a ruling issued by the Court of First Instance pending a final judgment from the Appellate Courts.

20. It is wrong and misconceived to simply submit that a party is not bound to comply with a ruling issued by a court of first instance pending a final outcome from the appellate courts. In fact, the Defendant provided no legal basis to substantiate their submission that a ruling issued by the Saudi Court of First instance was not enforceable. Therefore, a logical conclusion to draw from this is that the Defendant was attempting to delay the implementation of the Court’s decision relying on a misconceived notion that a decision of a court of first instance is of no effect in anticipation of the Appellate Court’s ruling on the issue of infringement. I will elaborate further on why the Defendant’s argument is weak, in the context of copyright infringement, the issue of liability is established when anyone other than the owner unlawfully violates the exclusive rights afforded to the copyright proprietor, in this case the copyright infringement was clearly established when Murun misused the Claimant’s exclusive works by reproducing it on his channel and social platforms, undoubtedly the breach occurred there and then. As such, I find it unclear that in some way the Defendant did not intend to implement the Court of First Instance ruling because it was anticipating a different outcome from the Courts on the issue of liability, when it was quite clear that the artist violated the Claimant’s exclusive rights at the point of the unauthorised publication.

21. In summary, the copyright breach was not a fact-finding exercise, in comparison to other types of breaches where a judicial body would be required to intervene in order to determine if there had been an actual serious breach committed by a party, for instance a court would need to assess if there had been a constructive dismissal committed by an employer taken into account a series of factors before determining that there was a serious breach and the employee is eligible to compensation as a result of the Court’s ruling.

22. Based on the above, the Claimant is entitled to any revenue generated as a result of the artist’s violation of its exclusive rights starting from the date the Saudi Court of First Instance issued its decision, June 2021.

23. Moving on to the profits and revenue generated following the ruling issued by the Court of Appeal. Based on reviewing and analysing the financial reports, it is evident that the Defendant



enforced the decision of the Saudi Court of Appeal repaying the Claimant's gross revenue attributable to the infringement starting from April 2022 to June 2023.

24. As explained during the Hearing, the successful party will be entitled to recoup its cost in appointing the forensic expert from the unsuccessful party. Given the fact that the Claimant was successful in establishing that the Defendant was liable to implement and enforce the decision issued by the Saudi Court of First Instance however chose not to do so, the Defendant shall repay the Claimant's cost of **AED 7,500** which was contributed toward the appointment of the expert.

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