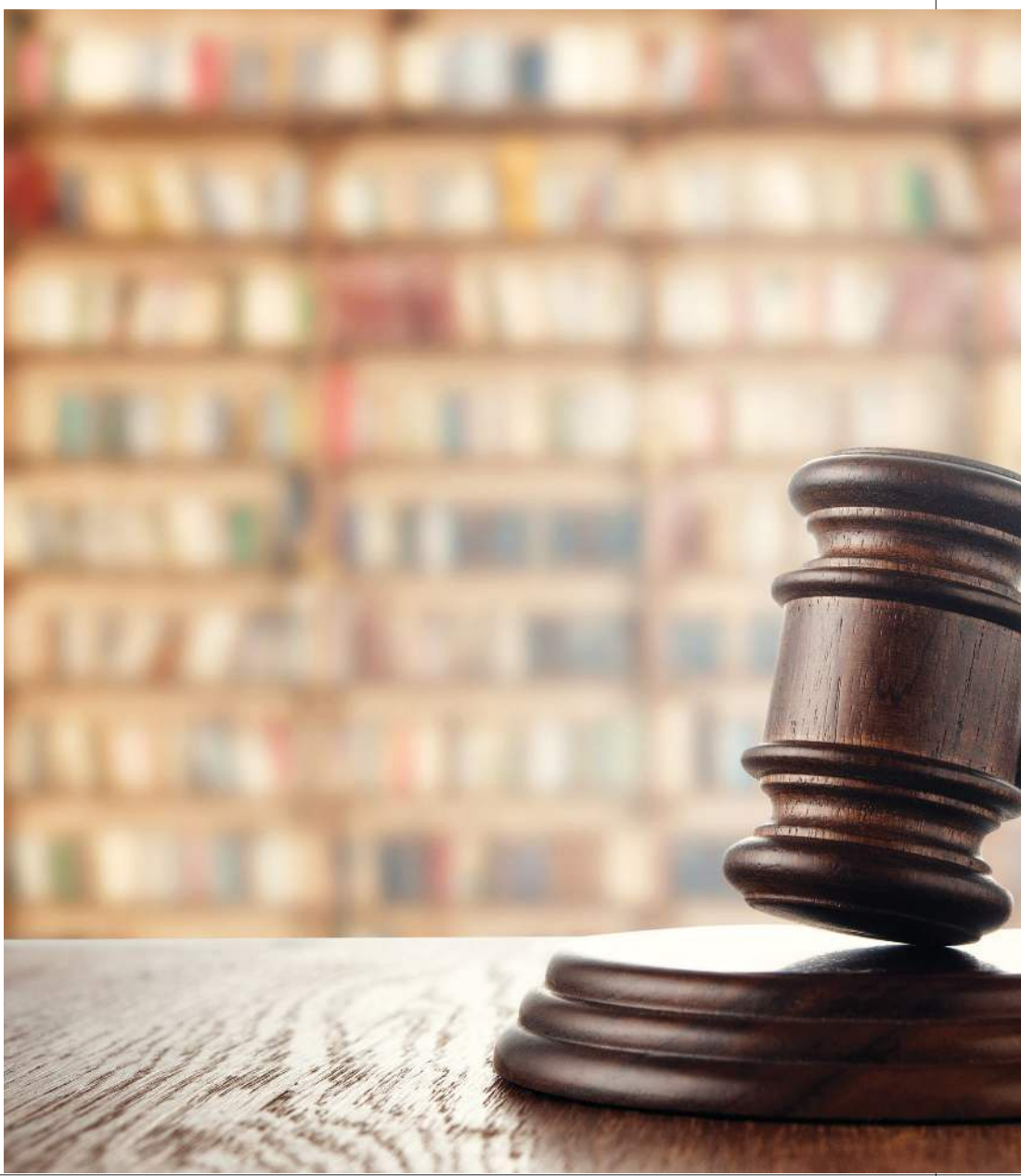
Victory for lawyers

A commentary by Al Kabban & Associates on a recent assessment of legal fees dispute that the Firm was able to determine and attain in the Dubai Court of Cassation.

In an industry where blood, sweat and tears are poured into a case to attain the best possible outcomes for their clients, lawyers are unfortunately not foreign to the same client's stifling payment terms. It has become a common risk that clients find ways to evade payment due to the absence of a contract governing the lawyer-client relationship or due to the contract being



rendered void for a number of various reasons. The Court of Cassation has now ruled in favour of rewarding lawyers for their time and effort in a recent break-through, successfully achieved by the Firm. This occurred in the Dubai Court of Cassation Case No. 2 of 2021 and Cassation Application No. 2 of 2022 (Court of Cassation General Assembly) related to determining whether the various s Courts should be entitled to assess the lawyers' legal fees in every stage of Court, as opposed to the Dubai Court of First Instance ruling a lumpsum fee covering all stages of Court, based on a petition submitted by the lawyer pursuant to Article 29 of the Federal Law No.23 on regulating the legal profession and its amendments.



THE LEGAL FRAMEWORK

As is stands, Article 29 of the UAE Federal Law no. 23 on regulating the legal profession and its amendments states that:

Article (29)

"*The lawyer shall receive the legal fees thereof in accordance with the contract signed between himself and the principal thereof. Nevertheless, the Court hearing the case may, upon the request of the principal, reduce the legal fees agreed upon should it deem that such legal fees are overstated with respect to the efforts exerted for the case and to the benefits of the client.*

Such legal fees may not be reduced should the agreement thereto be made subsequent to the termination of the work. Should there not be a written agreement with respect to the legal fees, or should the written agreement be void, the Court hearing the case shall, in the event of a dispute and upon the request of the lawyer or the principal, estimate the legal fees of the lawyer in accordance with the efforts exerted thereby and the benefits accrued to the principal.

The lawyer and the client shall be entitled to grieve against the estimation order within fifteen days following the notification thereof of such order, and such by charging the litigant thereof with the appearance before the Court which issued the order.

The grievance shall be heard in a summary manner.

However, should the legal fees subject of the litigation be for another task and not for the case heard by the Court, the lawyer and principal may each file a regular case for the estimation thereof. Such case shall be subject to the rules of the Civil Procedures Law."

THE CASE

Due to the Firm being left with a fees contract rendered void, the Firm decided to apply to each of the Court of First Instance, Court of Appeal, Court of Cassation and Execution Court to assess and quantify the work conducted and results achieved on behalf of the client. At first, it was only successful in the Court of First Instance, where the remaining Courts of Appeal and Execution ruled that the Firm must utilise the appropriate process of first filing the application in the Dubai Court of First Instance and proceeding via that route.

However, the Firm's application to the Cassation Court for the assessment of legal fees had the judges at a standstill and a unified decision on the issue of whether designated Courts should be authorised to assess lawyers' fees for particular stages was not reached.

The competent chamber in the Court of Cassation referred the case to the General Assembly of the Court of Cassation, where it was decided unanimously that the previous precedent which establishes that, pursuant to the provisions of Article No. 29, paragraphs 2, 3 and 4 of Law No. 22 of 1991 regarding the Legal Profession along with Article No. 140 of the Civil Procedure Law, if there is no written agreement between the lawyer and their principal to receive legal service fees for actions and cases filed in favor of the principal, the Court of First Instance shall be the competent Court to assess the legal fees according to the efforts exerted by the lawyer in all its stages and the benefit to the principal should be cancelled. It was also decided that the Court that should hear the case when there is a dispute between the lawyer and their principal over the professional fees is the Court that heard and determined the case, grievance or execution objection, cassation, or the Court that heard the objection for rehearing the case, as the case may be. This Court is required to estimate the professional fees for the efforts exerted by the lawyer and the benefit accrued by the principal, whether it is the Court of First Instance, the Court of Appeal, the Court of Cassation, the Execution Court, or the Court that heard the objection for rehearing the case. This is because the respective Court would be in the best position to estimate the legal fees associated with the efforts exerted by the lawyer before the Court in question and the benefit accrued to the principal accordingly.

THE VERDICT

The General Assembly of the Dubai Court of Cassation ruled that in circumstances where there is no contract governing the relationship between the lawyer and client or if the said contract is rendered void, the Courts in the different stages have the authority, and would be the most experienced, to assess and grant legal fees to lawyers for services rendered on behalf of their clients at every stage of Court, from the Court of First Instance all the way through to the Execution Court.

Therefore, depending on the stage the case has reached, lawyers can now submit applications to the designated Courts the case was heard in to request an assessment of the fees entitled to the lawyer based on the amount of work exerted in that specific Court.

Furthermore, due to the Dubai Court electronic portal lacking a feature for the assessment of lawyers' legal fees for the Execution stage of proceedings and based on the Firm's suggestion, an additional feature will be added to the portal, in which lawyers can lodge a request for an assessment of their legal fees for the Execution stage, via an online application in the Dubai Courts.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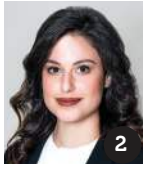
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