

Right of Defence is Guaranteed by UAE Federal Supreme Court

by Ahmed Abdulshafe - -

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The UAE Federal Supreme Court recently issued a judgment confirming that an accused person's right of defence must be respected by the UAE Courts.

Al Tamimi & Co represented the First Defendant and obtained the favourable Supreme Court judgment on his behalf.

The Indictment

It should be noted at the outset that the First Defendant ("Client") does not accept any of the allegations made against him in the indictment. Our Client is a UAE national and was at the material time a high-level UAE Government employee. The Second Defendant ("D2") was an accountant working with him. They were both, therefore, Public Officials as defined by Article 5 of the UAE Federal Law No. 3 of 1987 as amended ("UAE Penal Code").

The Public Prosecutor alleged in the indictment that our Client had instructed D2 to keep the cash income of the department aside, rather than depositing it in the appropriate bank account. The amount in question is AED18m. It was alleged that our Client used this money for personal expenditure, while D2 also received benefits for his part in the scheme. The Public Prosecutor alleged that this behaviour amounted to an offence contrary to Article 224 of the UAE Penal Code, which states:

A Public Official, or any person to whom a public service is assigned, who embezzles funds which are in his possession due to his office or assignment, shall be liable to a maximum penalty of 15 years' imprisonment.

The Indictment further alleged that, as part of the embezzlement, the defendants had acted together to forge official documents (UAE government forms) and unofficial documents (bank statements) in order to cover up the embezzlement, in violation of Articles 216, 217, 218 of the UAE Federal Penal Code and that they used these forged documents contrary to Article 222.

Article 218 defines an 'official document' as a document:

...which a Public Official has the competence to prepare, to be involved in the production of, or to grant an official quality.

The forged UAE government forms and bank statements were submitted to the accounting department in the relevant UAE Ministry. Together, these forms showed that the amount received by the department had been deposited in the bank account, which was not the reality of the situation.

Court Judgments

D2 had made a confession during the investigation, in which he blamed our Client and stated that he was acting upon the orders of our Client. The Public Prosecutor relied upon this confession as evidence against our Client.

The Court of First Instance convicted both defendants – our Client attended but D2 was convicted in his absence – and passed sentences of five years' imprisonment and an AED18m fine. The Court also made orders for the refund the embezzled amount, seizure of the forged documents and for D2 to be deported from the UAE after the execution of the sentence. Further, and of particular significance to our Client, the Court made a number of punitive orders against him, including prohibitions on voting, acting as a legal custodian or agent, wearing national or foreign medals and managing public institutions or joint stock companies, all of which were imposed for a period of three years beginning after completion of the prison term.

Our Client appealed the decision of the Court of First Instance but the court of Appeal ruled to reject the appeal on the merits, and upheld the lower court's verdict.

Al Tamimi & Company filed a Cassation petition against the Court of Appeal judgment, arguing that the judgment was flawed and that it prejudiced our Client's right of defence, as neither of the lower courts reviewed any of the allegedly forged documents in the presence of our Client, in violation of his right to properly defend himself. Further, the lower courts had not considered critical documents that we submitted on behalf of our Client and which contradicted the confession made by D2 (upon which the lower courts had relied for the conviction) and proved our Client's innocence of the allegations against him.

Supreme Court Judgment

The Supreme Court found in favour of our Client, stating that the omission of the lower courts to allow our Client the opportunity to review the allegedly forged documents had prejudiced the fairness of the trial proceedings. The allegedly forged documents were a fundamental aspect of the case and the courts are required by duty to scrutinise the basic evidence and defendants must be given the opportunity to review and comment on such evidence.

Further, with regard to the argument that the confession by D2 was unreliable, we had asked the lower courts to appoint an expert to review the documents submitted but, this request was rejected. The Supreme Court found that the lower courts had also failed our Client in this regard.

The Supreme Court held that the defence advanced on behalf of our Client related to challenges of essential evidence in the case which, if such challenges were upheld, would have led to a different verdict. The rights of the defendant must be respected and the verdict of the lower courts must be set aside and the case returned to the Court of Appeal to be heard by a differently constituted panel of judges.

Conclusion

This Supreme Court ruling confirms that the right of a defendant to present his defence should be respected by the courts of the UAE.