

From Freezing Orders to Enforcement Appeals:

Recent DIFC Court Decisions for Disputes Lawyers

The Honourable Wayne Martin AC KC

Stephen Burke

Nicholas Higgs

Madelaine Power

AGENDA

5 mins

Introductions

10 mins

Key trends from the DIFC Courts - **The Honourable Wayne Martin AC KC**

30 mins

Recent cases:

- Construction – **Nicholas Higgs**
- Arbitration & Injunctions – **Stephen Burke**
- Judicial Tribunal & Conflicts of Jurisdiction – **Madelaine Power**
- DIFC Enforcement - **Stephen Burke**

5 mins

Q&A

Key trends in DIFC litigation

- Construction disputes are moving through both the TCD and CFI, with expert evidence and contract-administration issues prominent.
- DIFC Courts continue to be a forum for cross-border enforcement and arbitration-support applications.
- Freezing orders and asset disclosure remain active tools, but jurisdictional gateways and full-and-frank disclosure are under close scrutiny.
- Enforcement appeals highlight the importance of precision in Part 45/50 orders and the interaction between DIFC and onshore proceedings.
- Procedural discipline: permission to appeal, strike-out/immediate judgment and costs orders are shaping litigation strategy.

Construction (1): *BAM Higgs & Hill v Affan*

CFI 106/2021 · Museum of the Future façade subcontract · H.E. Justice Michael Black · 23 February 2026

Facts

- AED 125m lump-sum subcontract for design, engineering, fabrication and supply of the stainless-steel external façade of the Museum of the Future. Claims and counterclaim raised fraud/dishonesty allegations, disputed variations, payment and substantiation issues, with extensive expert evidence.

Decision (H.E. Justice Michael Black, 23 February 2026)

- BAM's claims were dismissed; judgment entered for Affan on its counterclaim for AED 50.159m. Detailed treatment of the standard of proof for serious allegations, variation substantiation, and the role and limits of expert evidence.

Why It Matters

- A substantial, full-scale construction case run end-to-end in the DIFC (under UAE law).
- Design-and-build risk: a documented “full design responsibility” can defeat a variation claim. Build claims from contemporaneous records, not narrative – and never plead dishonesty without a strong, particularised foundation.

Construction (2): *Architeriors v ENI*

TCD 001/2024 · Amber Residency refurbishment · H.E. Justice Roger Stewart · 31 July 2025

Facts

- Refurbishment of the Amber Residency, Umm Suqeim, under a heavily amended FIDIC 1999 Red Book. Contractor claimed specification-change costs, a 200-day EOT with prolongation, and variations; employer counterclaimed delay damages, defects and deductions. Mid-project, the parties signed a two-page “Minutes of Meeting” settling claims “full and final” to its date.

Decision (H.E. Justice Roger Stewart KC, 31 July 2025)

- Contractor awarded AED 2.72m on the final account. The MOM was binding according to its terms and framed which claims survived. Stay of execution refused (Sept 2025); renewed permission to appeal dismissed by H.E. Chief Justice Wayne Martin (30 December 2025).

Why It Matters

- Mid-project settlement documents will be enforced as written – scope them with precision. The 51,545-page un-bookmarked trial bundle drew judicial criticism: presentation discipline is part of the merits in the TCD, as are costs consequences for over-claiming.

Freezing orders in aid of ongoing proceedings

Orabelle v Orzenia and *Ovya v Oshie* – Article 15(4), DIFC Courts Law 2025

The Backdrop

- Sandra Holding (CA, 2023): no freestanding WFO jurisdiction in aid of ongoing foreign proceedings – reversed in *Carmon v Cuenda* [2024] DIFC CA 003. Breadth confirmed under the new DIFC Courts Law in *Trafigura v Gupta* [2025] DIFC CA 001 and *Techteryx Ltd v Aria Commodities DMCC and others* [2025] DIFC DEC 001.

ARB 007/2026 *Orabelle v Orzenia* – 30 Jan 2026

- Ex parte WFO and asset disclosure in support of a contemplated Paris-seated arbitration dismissed for lack of jurisdiction: “within the DIFC” in Article 15(4) of new DIFC Courts Law “has work to do” and no DIFC assets were identified.

ARB 023/2026 *Ovya v Oshie* – 24 Apr 2026

- Justice Pelling KC: *Orabelle* should not be followed while *Trafigura* remains authoritative; the failure to cite *Orabelle* at the ex parte hearing was “greatly to be regretted” – the duty of full and frank disclosure restated (*Tugushev v Orlov* applied).

Resolution of conflicting authorities

- *Orlagh v Orchid* [2026] DIFC CA 001: an indication of how conflicting first-instance and appellate authorities will be resolved.

The Conflict of Jurisdiction Tribunal

- Established by [Decree No. 29 of 2024](#), replacing the Joint Judicial Committee created by Decree No. 19 of 2016. [Rules](#) in Resolution No. 11 of 2024.
- 7 members, three from Dubai Courts, three from DIFC Courts plus Judicial Council Secretary General. Chairman is Chief Justice of Court of Cassation, Deputy Chairman is Deputy Chief Justice of the DIFC Courts.
- Website (English language); 82 [Decisions](#) since 2016.
- Article 4 (Decree No. 29 of 2024), the Tribunal:
 - (i) determines the competent judicial authority where a conflict arises as to whether one of the “Judicial Authorities” or the DIFC Courts **has jurisdiction** over a claim or application;
 - (ii) determines **which judgment is to be enforced** where the DIFC Courts and another Judicial Authority have issued contradictory rulings between the same parties on the same subject matter; and
 - (iii) performs **any other task** assigned by the Ruler or the Chairman of the Tribunal.

The Conflict of Jurisdiction Tribunal

CJT Application No. 2 of 2026 – Almakhawi v Emirates NBD Bank PJSC – 8 June 2026

- No conflict. A debtor’s onshore claim seeking a declaration he was not liable for a debt did not conflict with the Bank’s independent DIFC tort/asset-recovery claim concerning the dissipation of assets by a guarantor (his father to the applicant) (DIFC CFI-039/2025, ~AED 322.5m): different cause of action, subject matter and relief, reconcilable judgments. Historical factual connection between the claims not enough. No qualifying conflict, so no stay; application dismissed, deposit forfeited. “substantial identity between...cause, subject matter and relief sought.”

CJT Application No. 1 of 2026 – Global Marketing Systems DMCC v Guang Zhou Salvage – 20 April 2026

- Positive conflict over a Singapore (SCMA) award. The Tribunal split it by stage: recognition/ratification to the DIFC Courts (Art. 42 DIFC Arbitration Law, seat-blind; Art. 14(A)(5) DIFC Courts Law 2025), but enforcement via the Dubai Courts for want of a DIFC “enforcement link” under Art. 31(3).

CJT Application No. 2 of 2025 – Serene Resources DMCC v Energen DMCC – 2 September 2025

- Positive conflict over a Singapore (SIAC) award. The whole annulment-and-enforcement bundle went to the Dubai Courts as the court of general jurisdiction – DMCC (not DIFC) parties, no DIFC jurisdiction agreement, assets outside the DIFC. The DIFC case was stayed.

DIFC Enforcement: limits and mechanics

Orlagh v Orchid [2026] DIFC CA 001 – 6 May 2026

- Court of Appeal (Chief Justice Wayne Martin, Sir Peter Gross and Robert French JJ) allowed the judgment creditor's appeal. "Inside the DIFC" in Article 31(4) of the DIFC Courts Law marks the forum of enforcement, not the location of assets – so the DIFC's jurisdiction to enforce a recognised onshore Dubai judgment, and its Part 50 power to examine a debtor about its assets, is not confined to assets within the DIFC.

ARB 029/2025 Ozan v Owain – 9 Apr 2026

- Recognition and enforcement of a Singapore Chamber of Maritime Arbitration award; permission to appeal and stay of execution dismissed – a firmly pro-enforcement stance absent a proper basis to delay.

ARB 039/2025 Okeke v Obike – 5 Mar 2026

- Article 41 application to set aside a partial DIAC award dismissed – first as out of time under the three-month limit in Article 41(3), and in the alternative on the merits. Illustrates the high threshold and the strict timing for challenging awards before the DIFC Courts.

QUESTIONS?

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