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Dubai Court of Cassation Issues Directions on the Imprisonment of Judgement Debtors in the UAE

By Chatura Randeniya | 18 December 2023

Article 319(1) of the UAE Civil Procedure Law authorises an execution judge to imprison a debtor who fails to satisfy a judgment debt, unless the debtor is able to prove that he is insolvent.

Although the text of Article 319(1) places the burden of proving insolvency on the judgment debtor, this appears to have been reversed following a decision of the General Assembly of the Dubai Court of Cassation issued in October 2023. A judgment creditor is now required to prove that the judgment debtor is solvent before an order of imprisonment may be issued under Article 319. In its decision, the Court of Cassation refers to and codifies the principle of Islamic Sharia' which presumes the insolvency of a debtor.

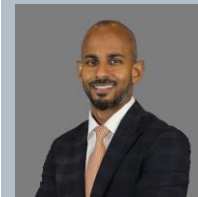
However, the decision maintains that Article 319(2) provides that a plea of insolvency cannot be maintained in the following circumstances:

- a) if the debtor deliberately smuggled or concealed their assets; or
- b) if the debt is due in instalments that the debtor has defaulted on, or if the debt arises out of a guarantee given to the court on behalf of a different debtor, except where the debtor provides evidence of new circumstances which did not exist before and which have adversely affected his financial situation.

This poses a significant evidentiary burden on judgment creditors, who must now prove that (a) the judgment debtor is solvent, or (b) that one of the exclusions in Article 319(2) applies in order to obtain an order for imprisonment. It also remains to be seen whether this decision would disincentivise parties from invoking the processes set out in the UAE's bankruptcy and insolvency legislation.

Orders issued by the court under Article 319(1) prior to this decision have been vacated. ■

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Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a ranked practitioner by Chambers and Partners and Legal 500.

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