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Commercial, construction, infrastructure and arbitration-related decisions

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A note from the editors

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This first issue of the 4-5 Gray's Inn Square digest on DIFC Courts inaugurates a series devoted to the judgments and orders of one of the most significant common law jurisdictions within the United Arab Emirates. The digest will focus on decisions of particular relevance to commercial litigation, arbitration, construction, infrastructure and cross-border enforcement. Its purpose is not to provide a general survey of DIFC jurisprudence, but to identify and analyse those decisions which bear directly upon the conduct of complex disputes before, and in support of proceedings connected with, the DIFC Courts.

The decisions considered in this issue are concerned with the jurisdictional, procedural and coercive architecture of interim relief. *Orabelle*, *Trafigura*, *Ovya* and VTB Bank do not merely illustrate the availability, or refusal, of worldwide freezing orders in the DIFC Courts. Taken together, they define the conditions upon which such relief may be sought, the limits within which it may be granted, the candour required when it is obtained without notice, and the sanctions that may follow when its disclosure machinery is later defied.

Orabelle supplies the point of departure. In that decision, the Court of First Instance dismissed an urgent ex parte application for a worldwide freezing order in support of anticipated Paris-seated arbitration proceedings, holding that jurisdiction was anterior to relief and that the applicant had not established the requisite connection with the DIFC. Its significance lies in its insistence that the Court's supportive role in foreign arbitration is not unbounded: procedural powers under RDC Part 25 cannot be exercised unless the statutory gateway is first satisfied. The decision thus represents a restrictive and jurisdictionally disciplined reading of Article 15(4) of Dubai Law No. 2 of 2025.

Trafigura then supplies the appellate counterpoint. The DIFC Court of Appeal held that freezing relief may be granted in aid of foreign proceedings capable of producing a judgment susceptible to recognition and enforcement in the DIFC, and that the 2025 Court Law had not silently abolished the jurisdiction recognised in *Carmon*. The Court treated such relief not as an autonomous assertion of universal jurisdiction, but as ancillary to the DIFC Courts' own prospective enforcement jurisdiction. It further rejected the proposition that the statutory language imposed a territorial asset requirement as a condition of relief.

The relationship between *Orabelle* and *Trafigura* is then worked out procedurally in *Ovya*. There, the Court of First Instance considered the consequence of an applicant's failure to draw *Orabelle* to the Court's attention on a without-notice freezing application. Justice Pelling KC accepted that the omission was inadvertent, but not blameless; the order survived only because *Orabelle* would not have altered the result in light of binding appellate authority in *Trafigura*. The decision is accordingly important not because it weakens the duty of full and frank disclosure, but because it preserves the distinction between breach and sanction while affirming that appellate hierarchy governs the treatment of inconsistent first-instance authority.

VTB Bank carries the analysis from jurisdiction and candour into compliance. The decision demonstrates that the disclosure provisions of a worldwide freezing order are not ancillary ornaments but the working machinery by which the order is policed. Justice Black KC treated non-compliance with asset disclosure obligations as capable of contempt, imposed substantial fines and daily continuing penalties, and referred the respondents to the Attorney General of Dubai. The decision's practical significance lies in its insistence that asset preservation is ineffective without enforceable asset intelligence, and that tactical non-compliance may convert interim relief into coercive procedural sanction.

The combined significance of these decisions is therefore one of controlled judicial strength. The DIFC Courts have affirmed a robust capacity to support foreign litigation and arbitration-adjacent enforcement, but only within a framework of statutory jurisdiction, appellate hierarchy, evidential seriousness and procedural candour. For commercial, construction and infrastructure disputes, where assets, counterparties, project structures and enforcement pathways frequently cross borders, the lesson is not simply that the DIFC Courts are willing to grant and enforce freezing orders. It is that such orders now sit within an increasingly coherent jurisprudence: jurisdiction must be properly anchored, without-notice applications must be scrupulously presented, and disclosure obligations must be obeyed with exactness.

In this issue

ANALYSIS 01

Limits of DIFC Interim Relief in Support of Arbitration

ARB 007/2026 Orabelle v Orzenia

The judgment rendered by the Court of First Instance of the Dubai International Financial Centre (DIFC) Courts on 21 January 2026 in *ARB 007/2026 Orabelle v Orzenia* [1] constitutes a notable addition to the growing body of jurisprudence delineating the jurisdictional boundaries of the DIFC Courts in matters of interim relief in aid of foreign arbitration proceedings. The reasons for the order, delivered by H.E. Justice Shamlan Al Sawalehi, address a question of increasing practical importance: the extent to which the DIFC Courts may exercise their powers to grant worldwide freezing orders in circumstances where the underlying arbitration is seated abroad and the connection to the DIFC is tenuous or non-existent.

At its core, the application concerned an urgent ex parte request for a worldwide freezing order and ancillary disclosure relief in support of anticipated arbitration proceedings seated in Paris. The claimant sought to restrain the respondent from dissipating assets in excess of USD 8 million, relying on the DIFC Courts' well-established powers under Part 25 of the Rules of the DIFC Courts (RDC). [3] The application thus invited the Court to engage with the interplay between procedural powers and the statutory limits of jurisdiction.

The decision is particularly significant because it reaffirms a foundational principle: that jurisdiction is anterior to relief. Even in urgent cases, the Court emphasised that it cannot entertain applications for interim measures unless a proper jurisdictional gateway is established. This insistence on jurisdictional discipline reflects a broader judicial reluctance to extend the DIFC Courts' reach beyond the limits envisaged by the governing statutory framework.

KEY POINT

Jurisdiction is anterior to relief.

Moreover, the judgment provides a careful interpretation of Article 15(4) of Dubai Law No. 2 of 2025, a relatively recent legislative provision that has yet to be extensively tested in practice. [2] The applicant's reliance on this provision, particularly its reference to "future arbitral proceedings" and "precautionary measures within the DIFC", raised questions of statutory construction that the Court addressed with notable rigour.

In dismissing the application, the Court did not reach the substantive merits of the claim or the traditional criteria for granting a freezing order. Instead, it confined its reasoning to the threshold issue of jurisdiction, thereby offering a clear and principled exposition of the limits of the DIFC Courts' supportive role in international arbitration.

Background to the Dispute

The dispute arose out of an Asset Management Agreement dated 7 December 2015, which governed the relationship between the claimant, a UAE-incorporated investment solutions provider, and the respondent, a foreign entity registered in the Cayman Islands. The agreement, which took effect from 1 January 2016, established a framework for the management of hospitality and property assets and included provisions for renewal and amendment.

In September 2022, the parties purportedly executed an amendment to the agreement introducing successive renewal terms. This amendment formed part of the claimant's case that the contractual relationship remained operative at the time of the alleged breach. The contractual matrix was thus characterised by a long-standing commercial relationship with evolving terms.

The claimant, *Orabelle*, contended that, in late November 2025, Orzenia took unilateral steps to terminate the agreement and exclude the claimant from operational control. These steps allegedly included revoking access to systems, premises, and banking facilities, most notably in relation to a UAE-based bank account described as the "Dubai Account". Such actions were said to constitute an early termination in breach of the agreement.

On this basis, the claimant asserted entitlement to a termination indemnity and unpaid management fees. However, rather than commencing arbitration immediately, the claimant sought urgent interim relief from the DIFC Courts. At the time of the application, formal arbitration proceedings had not yet been initiated, although a draft arbitration request had been exhibited and undertakings had been given to commence proceedings.

The relief sought by the claimant was extensive, involving a worldwide freezing order restraining the respondent from dealing with assets up to USD 8,071,581.39, together with an asset disclosure order requiring the respondent to identify its global assets. Ancillary procedural relief was also sought, including alternative methods of service outside the jurisdiction.

The legal basis for the application rested primarily on Article 15(4) of Dubai Law No. 2 of 2025, which the claimant argued conferred jurisdiction on the DIFC Courts to grant interim measures in support of foreign arbitral proceedings. The claimant also invoked the provisions of Part 25 of the RDC and relied on authorities affirming the DIFC Courts' supportive role in cross-border disputes.

Decision of the Court

The Court approached the application by identifying jurisdiction as the central issue to be determined. H.E. Justice Shamlan Al Sawalehi emphasised that, irrespective of the urgency of the application, the Court must be satisfied that it possesses jurisdiction before considering the substantive requirements for granting interim relief.

The claimant's reliance on Article 15(4) required the Court to consider whether the intended arbitration qualified as "future arbitral proceedings" and whether the relief sought constituted "precautionary measures within the DIFC". While the Court accepted that the statutory reference to "future" proceedings could encompass arbitrations not yet commenced, it held that this did not obviate the need to satisfy the territorial requirement embedded in the phrase "within the DIFC".

Interestingly, the absence of any identifiable assets within the DIFC proved decisive in the Court's decision. The claimant was unable to demonstrate that the respondent held assets within the DIFC, and the only specifically identified asset was a bank account located in onshore Dubai. This lack of a tangible connection to the DIFC raised serious doubts as to whether the statutory gateway had been satisfied.

The Court rejected the claimant's submission that the requirement of "within the DIFC" could be interpreted as referring merely to the location of the Court issuing the order. It held that such an interpretation would render the statutory language redundant, as any order of the DIFC Courts would, by definition, be made within the DIFC. Therefore, the Court was not persuaded that the legislature intended such a hollow formulation.

Instead, the Court construed the phrase as requiring a substantive nexus between the relief sought and the DIFC. In the absence of assets or other relevant connections within the DIFC, the application could not be said to fall within the scope of the statutory provision. The worldwide nature of the freezing order further underscored the absence of a DIFC-specific connection.

The Court also noted that the arbitration had not yet been commenced and that the applicant's case relied on undertakings rather than concrete procedural steps. While not determinative in itself, this factor reinforced the Court's cautious approach to jurisdiction.

Importantly, the Court did not proceed to analyse the traditional criteria for granting a freezing order, such as the existence of a good arguable case or a real risk of dissipation. Having found that it lacked jurisdiction, the Court considered it unnecessary and inappropriate to address these issues.

Accordingly, the application was dismissed in its entirety. The decision thus stands as a clear affirmation that the DIFC Courts' powers, however extensive, remain subject to the limits imposed by their statutory jurisdiction.

Takeaways

The judgment in *Orabelle v Orzenia* offers several important lessons for practitioners engaged in cross-border arbitration and interim relief applications, particularly in the DIFC Courts. Foremost among these is the reaffirmation that jurisdiction is a threshold requirement that cannot be circumvented by the urgency or desirability of the relief sought. The Court's insistence that jurisdiction must be established at the outset, rather than deferred, reinforces a disciplined and principled approach to the exercise of judicial power.

The Court's interpretation of Article 15(4) of Dubai Law No. 2 of 2025 provides valuable clarification of the requirement that precautionary measures be "within the DIFC". By construing this phrase as requiring a substantive territorial nexus, rather than merely the formal fact that the order is issued by a DIFC court, the judgment limits any expansive reading of the DIFC Courts' powers in support of foreign arbitral proceedings. This ensures that the statutory language retains operative meaning and guards against jurisdictional overreach.

The decision further underscores the importance of evidential precision as the claimant's inability to identify assets within the DIFC proved determinative, notwithstanding the global nature of the relief sought. In practical terms, this signals that applicants must anchor their claims in demonstrable connections to the DIFC if they are to invoke its jurisdiction successfully. Clearly, the mere existence of a transnational dispute or the presence of assets elsewhere will not suffice.

Equally significant is the Court's reaffirmation of the technical distinction between jurisdiction and power. The DIFC Courts undoubtedly possess extensive powers under Part 25 of the RDC to grant freezing orders and ancillary relief. However, such powers are contingent upon the prior establishment of jurisdiction. This distinction, though elementary in theory, is of critical importance in practice, particularly in urgent ex parte applications where the temptation may arise to conflate the two.

A useful comparison may be drawn with the approach adopted by the Supreme Court of the United Kingdom in *UniCredit Bank GmbH v RusChemAlliance LLC*, [4] where the top UK Court asserted jurisdiction to grant anti-suit relief in support of an arbitration agreement also seated in Paris. In that case, the Supreme Court emphasised that the enforcement of contractual arbitration obligations does not depend on England being the natural forum for the substantive dispute; rather, it is sufficient that the court has a legitimate jurisdictional gateway, such as the governing law of the contract, and a contractual right requiring protection.

The Supreme Court observed that "it is desirable that parties should be held to their contractual bargain by any court before whom they have been or can properly be brought". Unlike the DIFC decision, which turned on the absence of any territorial nexus with the forum, the English court was willing to act precisely because a strong juridical connection, namely, English governing law, anchored its jurisdiction. The comparison instead reveals a convergent judicial concern as both courts undertake a rigorous inquiry into the existence of a sufficient juridical connection to the forum, whether articulated through territorial nexus or through the governing law of the contractual obligation.

From a strategic standpoint, these decisions collectively highlight the importance of forum selection and asset tracing in arbitration-related litigation. While courts such as those of England may adopt a more expansive approach where contractual rights are governed by their law, the DIFC Courts require a tangible territorial connection. Practitioners must therefore calibrate their litigation strategy with careful attention to both jurisdictional gateways and the location of assets.

Finally, the DIFC Court judgment contributes to the broader jurisprudential development concerning the role of courts in supporting international arbitration. It affirms that such support, while robust, is not unbounded. By delineating the limits of its jurisdiction with clarity, the DIFC Court enhances predictability and reinforces its standing as a forum that combines international openness with strict adherence to statutory constraints.

Footnotes

[1] *Orabelle v Orzenia*, DIFC Courts, Court of First Instance, Claim No. ARB 007/2026, H.E. Justice Shamlan Al Sawalehi, 21 January 2026.

[2] Dubai Law No. 2 of 2025 concerning the DIFC Courts, Article 15(4).

[3] Rules of the DIFC Courts, Part 25, in particular RDC 25.11–15 and 25.33–36.

[5] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30

ANALYSIS 02

Conduit Jurisdiction After the 2025 Court Law: *Trafigura* and the DIFC Courts' Power to Freeze

Trafigura v Gupta

On 22 September 2025, the Dubai International Financial Centre Courts (DIFC) Court of Appeal, constituted by H.E. Chief Justice Wayne Martin, H.E. Justice Robert French and H.E. Justice Sir Peter Gross, delivered judgment in *(1) Trafigura PTE LTD (2) Trafigura India PTV LTD v (1) Mr Prateek Gupta (2) Mrs Ginni Gupta.* [1]

The appeal concerned the jurisdiction and power of the DIFC Courts to grant a UAE-wide freezing order and ancillary disclosure relief in aid of foreign proceedings pending before the High Court of England and Wales. The Court allowed the appeal, continued the freezing orders originally made by the Court of Appeal on 26 April 2025, and remitted questions of variation, undertaking and outstanding costs to the Court of First Instance.

The decision arose in the immediate aftermath of DIFC Courts Law No. 2 of 2025, which came into force on 15 March 2025 and superseded the former Judicial Authority Law and DIFC Court Law. The question was whether that statutory change had curtailed the jurisdiction recognised in *Carmon*, by which the DIFC Courts could grant freezing relief in aid of foreign proceedings capable of producing a judgment susceptible to recognition and enforcement in the DIFC [2]. The Court of First Instance had held that the new law required a direct link to the DIFC and that, absent such a link, it lacked jurisdiction. The Court of Appeal rejected that construction.

KEY POINT

Protective relief remains ancillary to prospective enforcement.

The relevance of *Trafigura* lies in its preservation of the DIFC Courts' protective jurisdiction in transnational litigation. The Court did not treat freezing relief as an autonomous jurisdictional adventure. It characterised it as ancillary to the Court's statutory enforcement jurisdiction, and as necessary to prevent that jurisdiction from being rendered ineffective before the foreign judgment comes into existence. That reasoning has consequences beyond the particular commercial dispute. Furthermore, it confirms that the 2025 Court Law did not, indirectly, extinguish the DIFC Courts' established capacity to serve as a supportive forum for cross-border enforcement.

Background to the Dispute

The English proceedings concerned claims brought by *Trafigura* PTE Ltd and *Trafigura* India PTV Ltd against Mr Prateek Gupta and other defendants. The claims pleaded in England included deceit, conspiracy, inducing breach of contract and unjust enrichment, arising from an alleged large-scale commodities trading fraud concerning supposed LME-grade nickel cargoes. The DIFC proceedings did not adjudicate those claims. They proceeded on the footing that the appellants sought interim relief in Dubai to protect the practical utility of any judgment that might ultimately be obtained in England.

The first respondent, Mr Gupta, was a defendant in the English proceedings. The second respondent, Mrs Ginni Gupta, was not. She was joined to the DIFC application on the basis that assets held in her name were said to belong to, or be amenable to enforcement against, the first respondent. The judgment describes that aspect by reference to the Chabra jurisdiction, namely, relief against a non-cause-of-action defendant where the order is ancillary to relief against a party against whom a substantive cause of action is pursued.

The appellants had already obtained freezing relief in England. They had secured a worldwide freezing order against the first respondent and others, and subsequently freezing relief against the second respondent in respect of assets said to be held for the first respondent. The difficulty, as presented to the DIFC Courts, was practical rather than formal. The respondents resided in onshore Dubai, not in England or the DIFC, and assets identified through disclosure were said to be substantially situated in Dubai and likely held in the second respondent's name. The appellants, therefore, sought a DIFC order intended to be enforced before the onshore Dubai Courts.

On 11 April 2025, the appellants issued a claim in the DIFC Court of First Instance seeking a UAE-wide freezing order and ancillary disclosure orders. The maximum sum initially identified in the judgment was USD 650 million; the draft order referred to all of the first respondent's UAE assets up to USD 625 million and specified assets of the second respondent. The application was made without notice, supported by affidavit evidence, and grounded upon Articles 14, 15, 19, 24 and 31 of the 2025 Court Law, together with RDC Part 25.

At first instance, H.E. Deputy Chief Justice Ali Al Madhani accepted that the appellants had shown sufficient substantive grounds for interim relief, including a good arguable case and urgency arising from dissipation risk. The application failed on jurisdiction alone. His Excellency concluded that Articles 14 and 31 of the new law required a direct link to the DIFC, whether the application was characterised as a fresh claim for interim relief or as enforcement of existing English orders. Since the respondents resided outside the DIFC, and no direct DIFC asset link had been shown, the application was dismissed.

Permission to appeal was granted promptly. The first ground was that the Court of First Instance had erred in holding that it lacked jurisdiction. The second was that, at least, jurisdiction was strongly arguable, such that interim relief should have been granted pending full argument. At the initial ex parte stage before the Court of Appeal, the Court declined to determine the jurisdictional question finally in the respondents' absence, but set aside the refusal of relief and made freezing and ancillary orders. The jurisdictional issue was then adjourned for an inter partes determination, which culminated in the judgment of 22 September 2025.

Decision of the Court of Appeal

The Court of Appeal began by situating the appeal within the continuity between the former statutory regime and the 2025 Court Law. Under the former Judicial Authority Law and DIFC Court Law, the Court had recognised in *Carmon* that the DIFC Court of First Instance had power to grant freezing orders in aid of foreign proceedings where the eventual foreign judgment might be recognised and enforced in the DIFC. That jurisdiction was not understood as a free-standing merits jurisdiction over the foreign dispute. It was an incident of the Court's own enforcement jurisdiction.

The statutory question was whether the 2025 Court Law displaced that position. The respondents' case concentrated on Article 15(4), particularly the Arabic formulation accepted by both sides as better rendered in English by the expression "provided that", rather than "seeking". The respondents submitted that the provision required the precautionary measure to be applied to assets, entities, or interests within the DIFC. The Court did not accept that construction. It held that the decisive words were the reference to measures "within the DIFC", and that those words denoted the taking of protective measures through the DIFC Courts, not the existence of assets in the DIFC.

The Court's central holding was that Article 31(4) supplies the jurisdiction to enforce foreign judgments. The issue was not whether such enforcement jurisdiction existed, but whether a freezing order could be issued before the foreign judgment was obtained to prevent eventual enforcement from being thwarted. The Court held that a freezing order of the kind sought did not require a separate head of jurisdiction where it was sought in aid of an enforcement jurisdiction that might be enlivened by a foreign judgment recognised and enforced in the DIFC.

That conclusion was reinforced by the Court's holding that Article 15, read with its opening words, expressly conferred jurisdiction over interim and precautionary measures related to proceedings outside the DIFC. Whatever the outer limits of that provision, it encompassed interim measures in aid of proceedings capable of yielding a judgment recognisable and enforceable in the DIFC. That included freezing orders designed to prevent the DIFC's enforcement procedures from being frustrated, and disclosure orders relevant to foreign proceedings and any subsequent enforcement process.

The Court therefore rejected the proposition that the 2025 Court Law had silently introduced a territorial asset requirement. It regarded such a reading as inconsistent with the statutory text, the continuity of the legislative scheme, and the public policy reasoning in *Carmon*. The accepted Arabic translation did not alter that conclusion. The connecting phrase "provided that" did not transform Article 15(4) into a limitation confining relief to assets or entities already situated in the DIFC. In the Court's analysis, nothing in the 2025 Court Law affected the correctness of the *Carmon* proposition.

The respondents' concerns about constitutional boundaries, forum shopping and possible conflict with onshore Dubai Courts were addressed as matters of characterisation and discretion. The Court held that, if the DIFC Court had jurisdiction and power on the true construction of the 2025 Court

Law, its exercise of that jurisdiction did not override the Dubai Courts. Rather, the offshore and onshore courts had different jurisdictions, with the DIFC jurisdiction augmenting that of the onshore courts. Any residual concerns about comity or overlap would go to discretion; they did not defeat jurisdiction.

The appeal was accordingly allowed on both grounds. The freezing and ancillary orders made by the Court of Appeal on 26 April 2025 were continued. Because the procedural setting had evolved since the original return date, the Court remitted the variation of the orders and the provision of any fresh undertaking to the Court of First Instance. The respondents were ordered to pay the costs of the adjourned appeal hearing on the first ground, to be assessed if not agreed.

Takeaways

The first consequence of *Trafigura* is that the 2025 Court Law is not to be read as a legislative retreat from the DIFC Courts' established enforcement-support function. The Court of Appeal declined to infer a substantial contraction of jurisdiction from altered statutory language where the new law contained no clear instruction to that effect. The result is not that the DIFC Courts possess unlimited protective power. It is that the protective power remains available where it is properly ancillary to a recognised head of jurisdiction, in particular, the enforcement of foreign judgments.

The second consequence is purely methodological. The judgment treats freezing relief in aid of foreign proceedings as a means of preserving the efficacy of the DIFC's own adjudicatory and enforcement processes. That is why the absence of DIFC assets at present did not defeat jurisdiction. The relevant juridical connection was not the present situs of assets, but the potential engagement of the DIFC Courts' recognition and enforcement jurisdiction if the foreign proceedings resulted in an enforceable judgment.

The third consequence concerns Article 15(4). Although the dispute before the Court concerned English court proceedings, the statutory text also refers to current or future arbitral proceedings outside the DIFC. The judgment should not be overstated as deciding every question that may arise in arbitration-related applications under Article 15(4). It does, however, supply authoritative guidance that the expression concerning precautionary measures within the DIFC is not, without more, an asset-situs requirement. That reasoning is likely to be material where parties seek DIFC interim relief in support of foreign arbitrations or the enforcement of eventual awards.

The fourth consequence is practical. Applicants seeking freezing relief in support of foreign proceedings should plead the enforcement pathway with precision. It will not be enough to invoke urgency in the abstract. The applicant must show how the foreign proceedings may produce a judgment or order susceptible to recognition and enforcement in the DIFC, why dissipation would imperil that process, and why interim relief is necessary to preserve the Court's eventual enforcement function. *Trafigura* is a powerful authority for jurisdiction; it is not a dispensation from the ordinary demands of evidence, undertaking, candour and discretion.

The fifth consequence is institutional. The Court of Appeal's treatment of the relationship between the DIFC Courts and the Dubai Courts is restrained. It does not posit competition between systems. It identifies a structure in which the DIFC Courts may issue orders within their jurisdiction, and the Dubai Courts may be engaged for enforcement where the object of enforcement lies outside the DIFC. That is a significant statement of coherence within Dubai's dual judicial architecture, particularly where assets, parties and proceedings move across legal and territorial boundaries.

The deeper significance of *Trafigura* is that it confirms continuity without denying statutory change. The Court did not disregard the 2025 Court Law; it construed it. It did not convert the DIFC Courts into a universal forum for interim relief; it anchored relief to enforcement jurisdiction. It did not treat concerns about forum shopping as fanciful in the abstract; it placed them in their proper juridical category as questions of discretion rather than jurisdiction. In doing so, the Court preserved the practical effectiveness of the DIFC Courts in transnational commerce while maintaining the discipline of statutory analysis.

Footnotes

[1] *(1) Trafigura PTE LTD (2) Trafigura India PTV LTD v (1) Mr Prateek Gupta (2) Mrs Ginni Gupta* [2025] DIFC CA 001, DIFC Court of Appeal, H.E. Chief Justice Wayne Martin, H.E. Justice Robert French and H.E. Justice Sir Peter Gross, 22 September 2025, order and Schedule of Reasons.

[2] *Carmon Reestrutura-engenharia e Serviços Técnicos Especiais (SU) LDA v Antonio João Catete Lopes Cuenda* [2024] DIFC CA 003.

ANALYSIS 03

Full and Frank Disclosure After *Trafigura*: The DIFC Courts' Corrective Discipline in *Ovya v Oshie*

ARB 023/2026 Ovya v Oshie

On 24 April 2026, the Dubai International Financial Centre Courts (DIFC) Court of First Instance issued the ruling of H.E. Justice Mark Pelling KC in *ARB 023/2026 Ovya v Oshie*. [1] The decision arose after an ex parte hearing on 8 April 2026 at which the claimant had obtained, or sought, a worldwide freezing order without notice to the defendant. The immediate procedural question was not whether the freezing order ought substantively to have been made, but whether the claimant's failure to draw the Court's attention to *Orabelle v Orzenia* required any remedial response. [2]

The ruling is concise, but its importance lies in the discipline with which it separates three matters often conflated in urgent interim relief, i.e., the applicant's duty of full and frank disclosure, the materiality of an omitted authority, and the binding force of appellate authority within the DIFC Courts. Justice Pelling KC accepted that the omission was inadvertent, but expressly declined to treat it as blameless, since *Orabelle* had been available on the date of the ex parte hearing.

The decision matters because it confirms that the DIFC Courts will not dilute the rigour of the without-notice duty merely because the omitted material is ultimately immaterial. Equally, it confirms that the sanction for non-disclosure remains discretionary, and that a failure to cite a first-instance decision will not disturb an order where that decision is inconsistent with binding Court of Appeal authority. The point is procedural, but its practical effect is substantial in the practice of arbitration-related freezing orders.

Background to the Dispute

KEY POINT

The without-notice duty is not diluted by hindsight.

The underlying dispute between *Ovya* and Oshie is not described in the ruling. The published materials do not identify the arbitration agreement, the seat of any arbitration, the quantum of the claim, the assets said to justify freezing relief, or the factual allegations advanced in support of the application. The Court's ruling is therefore not a merits judgment and should not be read as determining any substantive liability between the parties.

Interestingly, what is specified is the procedural posture. The claimant made an ex parte application for a worldwide freezing order at a hearing on 8 April 2026. Because the application proceeded without notice, the ordinary adversarial protection of the absent defendant was suspended. It followed that the claimant bore the "high duty" described in *Tugushev v Orlov*, namely to present the matter fairly and even-handedly and to draw attention to evidence and arguments which the absent party could reasonably be expected to advance. [3]

The authority not disclosed was *ARB 007/2026 Orabelle v Orzenia*, a recent first-instance decision of H.E. Justice Shamlan Al Sawalehi. In that case, reasons dated 30 January 2026 were given for an order made on 21 January 2026, dismissing an urgent ex parte application for a worldwide freezing order of up to USD 8,071,581.39 and related asset-disclosure relief, pending a contractual dispute to be resolved by arbitration seated in Paris.

Orabelle had treated jurisdiction as anterior to the ordinary freezing order criteria. The Court there held that, even in urgent applications, interim relief could be granted only where the Court was satisfied that it had jurisdiction, and that the jurisdictional question could not be postponed to the return date where the Court was not persuaded that a proper jurisdictional foundation existed.

The materiality of *Orabelle* lay in its treatment of Article 15(4) of the 2025 DIFC Courts law, the interim remedies provisions in RDC Part 25, and the Court's supportive role in cross-border disputes. The applicant in *Orabelle* had relied upon the notion that "future arbitral proceedings" and "suitable precautionary measures within the DIFC" would permit relief notwithstanding the absence of identified DIFC assets; the Court rejected that approach, holding that the application was not sufficiently anchored to a DIFC nexus.

Decision of the DIFC Court of First Instance

Justice Pelling KC began from the orthodox foundation of the without-notice jurisdiction. The "basic principle of fairness" is that a person directly affected by a court order should ordinarily be heard before the order is made, or at least have the opportunity to seek its revocation afterwards. The duty of full and frank disclosure is the procedural price paid by an applicant who seeks to displace that principle for reasons of urgency or secrecy.

The Court's formulation is significant because it does not reduce full and frank disclosure to a matter of forensic courtesy. It is treated as integral to the Court's ability to dispose expeditiously of without-notice applications and to the confidence which judges may repose in the material presented by a party appearing alone. Therefore, the duty is not confined to matters which the applicant subjectively considers decisive; it requires reasonable endeavours to identify relevant material, leaving materiality to the Court rather than to the applicant.

On that footing, the omission of *Orabelle* was a breach of forensic discipline. Justice Pelling KC accepted that the failure was inadvertent, but the acceptance of inadvertence did not absolve the applicant. The reason is plain: the judgment was available at the date of the hearing, and the duty imposed by the without-notice process is objective in its operation. An inadvertent omission may mitigate consequences; it does not retrospectively convert non-disclosure into compliance.

The decisive question was therefore whether the omission mattered to the result. Justice Pelling KC held that it did not. Had *Orabelle* been cited, the Court would not have followed it, because *Trafigura* was a decision of the DIFC Court of Appeal and was binding on all judges of the Court of First Instance. The judge stated that *Orabelle* was either inconsistent with *Trafigura*, or at least realistically arguably inconsistent with it and decided per incuriam of the Court of Appeal's decision.

This reasoning is particularly careful. The Court did not purport to overrule *Orabelle* in the abstract, nor did it undertake a freestanding appellate analysis of that decision. Rather, it treated the hierarchy of authority as dispositive for present purposes. So long as *Trafigura* remains authoritative, *Orabelle* should not be followed where its reasoning is inconsistent, or realistically arguably inconsistent, with the Court of Appeal's treatment of freezing orders in aid of foreign proceedings.

The outcome followed from that hierarchy, and Justice Pelling KC decided to take no further action regarding the non-disclosure. That conclusion rested on two cumulative findings. First, the omission was inadvertent, and second, the omitted authority would not have altered the decision reached on the without-notice application. The ruling, therefore, preserves the distinction between breach and sanction. The breach was identified; the order was not disturbed.

The Court nevertheless ended with a clear warning. Where there is a failure to comply with the duty of full and frank disclosure, the usual result will be discharge of the order and refusal to regrant it, or discharge and regrant accompanied by an adverse costs order in respect of the defective hearing. The ruling itself was also to be supplied to the respondent when the order was served, together with the Court's email to the claimant's advisers and their response.

Takeaways

Undoubtedly, the ruling confirms that arbitration-related freezing order practice before the DIFC Courts is now to be read through *Trafigura*, where the jurisdictional question concerned interim measures in aid of proceedings capable of producing enforceable relief. That is not to say that all arbitration-linked freezing applications will succeed, or that jurisdictional gateways have become ornamental. It is to say only that a first-instance decision imposing a narrower approach cannot be treated as controlling where it conflicts with a binding appellate authority.

For DIFC Courts applicants, the decision is a warning against selective legal presentation in urgent applications. The Court accepted inadvertence in this case, but did not treat inadvertence as an answer to the duty. A party seeking a worldwide freezing order without notice must anticipate the absent respondent's likely arguments, including adverse authorities, first-instance decisions, and jurisdictional objections. The fact that an authority may later be distinguished or held not to govern is no answer to the anterior obligation to place it before the Court.

For respondents, the ruling preserves the utility of challenging ex parte orders on grounds of non-disclosure, but also shows the limits of that route. A non-disclosure point will not necessarily secure discharge where the omitted material would not have affected the result. The respondent's strongest position will remain one in which the omitted matter is both adverse and material, or where the omission reveals a failure to conduct the fair and even-handed presentation required by the without-notice jurisdiction.

For arbitration practitioners, the decision is a reminder that interim relief in the DIFC Courts is governed not merely by urgency and asset risk, but by the architecture of judicial authority. *Orabelle* had reflected a narrower view of Article 15(4) in the context of a non-commenced foreign arbitration and the absence of DIFC assets. *Ovya* does not erase that reasoning as a matter of historical record, but it makes clear that, where *Trafigura* speaks to the relevant jurisdictional issue, it is *Trafigura* which controls.

For the enforcement strategy, the practical lesson is one of procedural sequencing. Parties seeking freezing relief in support of arbitral or foreign proceedings must identify with precision the jurisdictional basis for relief, the enforcement pathway, and the relationship between interim measures and eventual recognition or enforcement. The DIFC Courts are prepared to grant powerful protective orders, but only within a framework that respects both statutory jurisdiction and appellate precedent.

The deeper significance of *Ovya v Oshie* lies in its judicial economy. The ruling does not unnecessarily enlarge the doctrine, but it identifies the breach, measures its consequences, applies the hierarchy of authority, preserves the order, and warns future applicants of the ordinary sanctions for non-compliance. In that restraint lies its force: the Court affirms both the strictness of the without-notice duty and the primacy of binding appellate authority, without allowing either principle to be deployed mechanically.

Footnotes

[1] *ARB 023/2026 Ovya v Oshie*, DIFC Court of First Instance, Ruling of H.E. Justice Mark Pelling KC, 24 April 2026.

[2] *ARB 007/2026 Orabelle v Orzenia*, DIFC Court of First Instance, Reasons of H.E. Justice Shamlan Al Sawalehi for the Order dated 21 January 2026, 30 January 2026.

[3] *Tugushev v Orlov & Ors (No 2)* [2019] EWHC 2031 (Comm), [7(ii)] (Carr J).

[4] *(1) Trafigura PTE Ltd (2) Trafigura India PTV Ltd v (1) Mr Prateek Gupta (2) Mrs Ginni Gupta* [2025] DIFC CA 001, DIFC Court of Appeal, 22 September 2025, [128]–[138].

The DIFC Courts Deal with Contempt, AI and the High Price of Non-Disclosure

CFI 121/2025 VTB Bank PJSC v Kuanyshev and others

The Order with Reasons in CFI 121/2025, *VTB Bank PJSC v Timur Orazbekovich Kuanyshev and others*, issued by the Dubai International Financial Centre Courts (DIFC), Court of First Instance on 15 April 2026, is a decision of H.E. Justice Michael Black KC on a committal application arising from alleged non-compliance with a DIFC worldwide freezing order. The underlying WFO was issued by H.E. Deputy Chief Justice Ali Al Madhani on 19 December 2025 and continued by Justice Black on 7 January 2026. The committal application was dated 21 January 2026, heard on 25 March 2026, and granted in terms which combined substantial financial penalties, daily continuing fines and referral to the Attorney General of Dubai. [1]

The case did not require the Court to determine the merits of the underlying Russian debt claim. Its juridical centre lay in whether respondents who had notice of a freezing order and of its asset disclosure machinery had failed to comply with it in circumstances amounting to contempt under RDC Part 52. The Court's answer was emphatic, but its reasoning is more significant than the result. It treated asset disclosure not as an ancillary administrative feature of a WFO, but as the condition upon which the order's efficacy depends.

That is why the decision matters for international disputes practitioners beyond the immediate dispute as it demonstrates how the DIFC Courts may convert interim preservation into coercive procedural pressure, and how a party's failure to disclose assets can become more damaging than the underlying interim order itself.

Background to the Dispute

KEY POINT

Asset disclosure is the machinery by which a freezing order is policed.

The dispute arose from facilities advanced by VTB to Pechoraneftegaz JSC, a Russian oil company, under a facility agreement dated 4 April 2019. Mr Kuanyshev and Mr Shlenskikh entered into guarantee agreements on 15 July 2024, guaranteeing amounts owed by PNG. The Order records that they were indebted to VTB for RUB 7,191,396,362.56, approximately USD 89.25 million, and that the acquisition structure involved corporate vehicles in Cyprus, Belize and Austria. [2]

The factual matrix was aggravated by forged banking documents, as described by the Court. In correspondence with VTB, Mr Kuanyshev and Mr Shlenskikh had produced letters purporting to be from First Abu Dhabi Bank PJSC, showing that Shev Energy held funds exceeding its debt. The Court also recorded that FAB had confirmed that two letters and a purported SWIFT message were forgeries. That finding was not itself the contempt adjudication, but it formed part of the context in which the DIFC freezing jurisdiction was invoked. [3]

The respondents included Shev Energy, solely owned and managed by Mr Shlenskikh, and the wives of the two individual guarantors. The Order records that, under the applicable law, property acquired in the course of marriage was held jointly, with each husband having a 50% beneficial interest in property or assets legally owned by his wife. This explains why the freezing and disclosure relief was directed more broadly than only against the two guarantors.

VTB commenced Russian proceedings on 2 December 2025. It then applied in the DIFC on 16 December 2025 for a WFO, which was granted on 19 December 2025 against all five respondents. The disclosure provisions were stringent, requiring within five working days of service, each respondent had to inform VTB's legal representatives of all worldwide assets exceeding USD 10,000, and within 10 working days each had to swear and serve an affidavit setting out that information and, where possible, provide supporting documents.

The respondents acknowledged receipt of the WFO via emails sent on 5 and 6 January 2026, citing practical difficulties, holidays, sanctions-related considerations, translation issues, and efforts to instruct DIFC-qualified representation. On 7 January 2026, Justice Black continued the WFO and imposed witness statement obligations on the first and second respondents, directed to the position of the other respondents. By 21 January 2026, VTB had issued the committal application.

Parallel English proceedings became material to the DIFC Court's assessment. On 3 February 2026, VTB applied in England for a WFO over Mr and Mrs Kuanyshev, who were resident in England and had assets there. The English Court ordered asset disclosure above GBP 5,000, and Mr and Mrs Kuanyshev provided lists and affidavits in purported compliance with that English order. Interestingly, the fact of English compliance, in contrast to non-compliance in the DIFC, later became an aggravating factor in the DIFC Court's penalty analysis.

Decision of the Court

Justice Black began from the statutory and procedural architecture of contempt in the DIFC. Article 24(D)(5) of Dubai Law No. 2 of 2025 conferred power to make orders concerning the conduct of proceedings, including contempt orders. Article 35(A)(5) provided for punishment by fine for failure to comply with a judgment, decision or order of the DIFC Courts, and Article 35(B) permitted the Court to take measures necessary for the proper administration of justice or to refer the matter to the Attorney General of Dubai. RDC Part 52 supplied the procedural mechanism, including the requirement that written evidence on a committal application be given by affidavit.

The Court adopted the established tripartite test for contempt: knowledge of the terms of the order, conduct amounting to breach, and knowledge of the facts which made that conduct a breach. It was not necessary to prove that the contemnor appreciated that the conduct was legally contemptuous. The mental element attached to the act or omission, not to a specific intention to subvert the administration of justice. That distinction mattered because the respondents' case, insofar as it could be discerned from inadmissible material and oral submission, was not that disclosure obligations did not exist, but that delay and practical impediment should prevent a finding of contempt.

The Court was also careful to identify why disclosure under a WFO is not secondary. Drawing on prior DIFC authority, it endorsed the proposition that freezing injunctions would be "rather toothless" if information orders were ignored. The purpose of the disclosure limb is not merely to assist with eventual execution; it enables the claimant and the Court to monitor whether the freezing order is being complied with at all. In that sense, non-disclosure is not peripheral to the injunction. It attacks the means by which the injunction is policed.

The evidential position was stark. The respondents had served no admissible evidence. Documents and witness statements not verified by affidavit were before the Court only in the limited sense that the judge considered them where relevant to matters he had to decide. Mr Kuanyshev was offered the opportunity to give oral evidence under RDC 52.14, with the attendant possibility of cross-examination and with the privilege against self-incrimination explained to him. He declined. The consequence, in Justice Black's analysis, was that any respondent had adduced no admissible evidence.

Furthermore, the Court rejected the asserted explanations for non-compliance. The alleged difficulties arising from cross-border records, third-party banks, sanctions and representation were not supported by admissible evidence and, in any event, did not bear scrutiny. The so-called compliance packs contained no usable information: bank documents were redacted or omitted amounts, material corporate interests were not disclosed, and no schedules had been provided for Shev Energy, Mrs Kuanysheva or Ms Baymenova by the time of the hearing. The suggestion that sanctions made compliance impossible was described as patently false; the fact that Mr and Mrs Kuanysheva had complied with the English WFO made the asserted inability to comply in the DIFC unsustainable. [8]

Justice Black declined to treat Count 2, based on the first and second respondents' failure to provide witness statements concerning the position of the other respondents, as a freestanding contempt. If Count 1 were not proved, he considered it difficult to see how that failure could itself amount to contempt; if Count 1 were proved, Count 2 added little beyond another aspect of the same non-compliance. The intellectual force of the decision therefore rests on Count 1: the continuing failure to provide asset information and affidavit evidence required by paragraphs 9 and 11 of the WFO.

The conclusion was expressed in uncompromising terms. The Court was satisfied beyond reasonable doubt that each respondent knew of the WFO, failed to act in accordance with it, and knew the facts which made that failure a breach. Justice Black found that the respondents had engaged in a "cynical policy of delay, deceit and obfuscation" and that none of them had ever had the slightest intention of disclosing the full extent of their assets in compliance with the Court's orders. The breaches were intentional and egregious; there was no admission of breach, no admission of seriousness, no cooperation, and no apology capable of mitigation. [9]

The penalties reflected that analysis. Mr Kuanyshev and Mrs Kuanysheva were each fined USD 250,000; Mr Shlenskikh, Shev Energy and Ms Baymenova were each fined USD 150,000. Each fine continues at USD 10,000 per day until full and proper compliance with the WFO. Each respondent was also referred to the Attorney General of Dubai under Article 35(B), with the reference to record that breach of a court order is always serious because it undermines the administration of justice, and that continuing failure to disclose relevant information may warrant a long sentence in a court with criminal jurisdiction. [10]

Takeaways

The first consequence is procedural rather than rhetorical. A DIFC WFO is not merely a preservative label attached to assets. Its disclosure provisions are the working machinery of the order. Where the respondent does not disclose, the claimant is not simply deprived of information; it is deprived of the ability to test whether the restraint on dissipation is being honoured. The decision therefore reinforces the centrality of early asset intelligence in any cross-border enforcement strategy.

The second consequence concerns sanctions-based excuses. The Court did not decide any general proposition about sanctions law, nor did it hold that sanctions can never affect compliance with court orders. It held, on the material before it, that the sanctions arguments advanced were unsupported, inconsistent and not credible. The point is exact but important: sanctions rhetoric is not evidence, and geopolitical difficulty does not displace the obligation to obey a court order unless it is properly established under the procedural rules.

The third consequence is the significance of parallel compliance. The English WFO did not supply the juridical foundation for the DIFC contempt; Justice Black expressly rejected any confusion between non-compliance with a foreign order and non-compliance with the DIFC WFO. Yet the respondents' conduct in England was evidentially and penologically material. Compliance in one forum may demonstrate the practical ability to comply in another, and selective obedience may aggravate the contempt by revealing disrespect for the local court.

The fourth consequence lies in the Court's treatment of procedural form. The requirement for affidavit evidence in committal proceedings was not treated as a dispensable technicality. Where liberty-adjacent or quasi-criminal consequences are engaged, procedural discipline protects both sides: the applicant must prove contempt beyond reasonable doubt, and the respondent must meet the charge through evidence capable of being tested. Unsworn witness statements, schedules, submissions and after-hours supplemental filings did not become evidence by accumulation.

The fifth consequence concerns artificial intelligence, but it should not be overstated. Justice Black did not make AI the basis of the contempt finding but said that he strongly suspected that a large language model had written certain jurisdictional submissions because they were plausible but wrong and contained hallucinated authorities. That observation is significant precisely because it remained disciplined. The vice was not the technology as such; it was the filing of legal propositions and authorities which could not withstand verification.

Finally, for enforcement practitioners, the decision is a reminder that the decisive stage of a dispute may arrive before merits determination or enforcement. In transnational disputes, including arbitration-adjacent enforcement, asset preservation depends on enforceable disclosure, and enforceable disclosure depends on procedural seriousness. The DIFC Courts have now shown, in severe terms, what may follow where that seriousness is absent.

Footnotes

[1] *CFI 121/2025, VTB Bank PJSC v Timur Orazbekovich Kuanyshev and others*, DIFC Court of First Instance, Order with Reasons of H.E. Justice Michael Black KC, 15 April 2026.

[2] Ibid, [2]-[4].

[3] Ibid, [27]-[29].

[8] Ibid, [85]-[91] and [98].

[9] Ibid, [95]-[97].

[10] Ibid, [99]-[101].

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