



**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS**

**CICA 022 of 2021  
G0017 of 2021**

**BETWEEN:**

**BILIKA HARRY SIMAMBA**

**Appellant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

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**CERTIFICATE OF THE ORDER OF THE COURT**

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**UPON** the application of the Appellant to appeal the judgment of the Honourable Justice Phillip St John-Stevens dated 28 October 2021

**AND UPON** considering the documents filed herein

**IT IS HEREBY ORDERED** by Justice of Appeal Martin that for the reasons set out below:

- (1) The Appellant is entitled to maintain this appeal as of right;
- (2) The application for a stay until determination of the appeal is granted only to the extent necessary to allow this appeal to proceed, but is otherwise refused.

**Given under my hand and Seal of the Court this 22 day of December 2021**

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Jenesha Simpson  
Registrar of the Court of Appeal

## REASONS

1. Although the Notice of Appeal is headed as “being made as of right under section 26(3) of the Constitution”, the Appellant is not entitled to appeal under that subsection. That is because the subsection provides an appeal as of right to the Court of Appeal only “from any final determination of any issue by the Grand Court under the Bill of Rights”; and the Attorney General’s originating summons does not, either in form or in substance, raise any such issue. See *Nowak v Nursing and Midwifery Council*<sup>1</sup> and the cases there cited for authority, in relation to article 6 of the European Convention for the Protection of Human Rights (the equivalent of section 7 of the Bill of Rights annexed to The Cayman Islands Constitution Order 2009), for the proposition that litigation restraining orders do not impair the essence of the right of access to the courts and do not constitute a breach of article 6 rights.
2. The Appellant is, however, entitled to appeal as of right under the general law, and in particular under the Court of Appeal Act (2011 Revision). The order appealed against constitutes (subject to the appeal) the final determination of the whole of the substantive relief sought by the Attorney General’s originating summons. The same would have been the case if the originating summons had been dismissed. The order is accordingly to be treated as final under 12(3) of the Court of Appeal Rules (2014 Revision); and nothing in section 6 of the Court of Appeal Act, or in the Court of Appeal Rules, requires leave to appeal to be obtained.
3. I have considered whether the terms of the order appealed against themselves have the effect of requiring leave to be sought for any appeal. Strictly construed, they do; but it seems to me wrong to treat the order as having the effect of depriving the Appellant of a right that he would otherwise have to appeal without leave against the order itself. However, to avoid conflict with the terms of the order, I stay its operation to the extent necessary to allow this appeal to proceed, but only to that extent.
4. In deciding whether or not to grant a stay more generally pending determination of the appeal, I have had regard to the statements of the relevant considerations in *Hammond Suddards Solicitors v Agrichem International Holdings*<sup>2</sup> and *Department for the*

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<sup>1</sup> [2013] EWHC 1932 (QB) paragraphs 60-62

<sup>2</sup> [2001] EWCA Civ 2065

*Environment, Food and Rural Affairs v Downs*<sup>3</sup>. In the latter case, at paragraph 8, Sullivan LJ said this:

*“A stay is the exception rather than the rule, solid grounds have to be put forward by the parties seeking a stay, and, if such grounds are established, then the court will undertake a balancing exercise weighing the risks of injustice to each side if a stay is or is not granted”.*

5. Neither the Notice of Appeal nor the Grounds of Appeal in the present case suggest any grounds, let alone solid grounds, for the grant of a stay pending appeal.
  
6. The balancing exercise is strongly in favour of refusing a stay. If a stay is granted, but the appeal ultimately fails, the Appellant will in the meantime have been in a position without constraint to issue or pursue litigation, something which a judge (rightly, on this hypothesis) has determined it is not in the public interest that the Appellant should be able to do. If a stay is refused, but the appeal ultimately succeeds, the Appellant will not in the meantime have been precluded from pursuing claims, actions, proceedings or applications which he can persuade a judge of the Grand Court it is legitimate for him to pursue, since that is what the (unstayed) order provides. The need for the Appellant to obtain permission for the pursuit of any relevant litigation while his appeal proceeds is no more than “the kind of temporary inconvenience that any appellant is bound to face because he has to live, at least temporarily, with the consequences of an unfavourable judgment which he wishes to challenge in the Court of Appeal” (per Sullivan LJ in *DEFRA v Downs* (above) at paragraph 9), and is insufficient to justify the grant of a stay.

Hon John Martin, Justice of Appeal  
22 December 2021

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<sup>3</sup> [2009] EWCA Civ 257