

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS  
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS**

**CICA (Civil) Appeal No 12 of 2021  
(Formerly FAM 66 of 2014)**

**BETWEEN:**

**AH**

**Respondent /Appellant**

**-AND-**

**AW**

**Petitioner/Respondents**

**CONSIDERED ON THE PAPERS**

**BEFORE:**

**The Rt. Hon Sir John Goldring, President  
The Hon C Dennis Morrison, Justice of Appeal  
The Rt. Hon Sir Alan Moses, Justice of Appeal**

**Judgment delivered: 17<sup>th</sup> March, 2022**

**APPLICATION FOR LEAVE TO APPEAL TO PRIVY COUNCIL**

**JUDGMENT**

**The Rt. Hon Sir John Goldring, President**

*Introduction*

1. For convenience, I shall refer to the proposed Appellant as the husband, the Respondent as the wife.

*Discretionary leave to appeal to the Judicial Committee of the Privy Council (“JCPC”)*

2. The husband now applies for leave to appeal to the Judicial Committee of the Privy Council. He agrees that there is no appeal as of right. By section 3(2) of the Cayman Islands (Appeals to the Privy Council) Order 1984:

*“Subject to the provisions of this Order, an appeal shall lie from the decisions of the Court to Her Majesty in Council with the leave of the Court in the following cases-*

*....(b) decisions in any civil proceedings where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council..."*

3. As this Court recently observed in *Essar Global Fund Limited and Essar Capital Limited v Arcelormittal North America Holdings LLC* CICA, 6 May 2021:

*"It is also relevant to quote the test which the JCPC itself applies when considering applications for permission to appeal, which is set out in paragraph 3.3.3(a) of Practice Direction 3 to the Judicial Committee (Appellate Jurisdiction) Rules 2009:*

*"Permission to appeal is granted-*

*(a) in all cases for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Judicial Committee at that time bearing in mind that the matter will already have been the subject of judicial decision and may already have been review on appeal."*

*The background*

4. The background to this application is set out in the two substantive judgments of this Court, the second of which forms the basis of this application. I shall not repeat the detail. The issue before the first instance judge in the second appeal was the sum the husband should pay the wife by way of a capital, 'clean break,' payment. The judge concluded that the pre-nuptial agreement between the parties required a payment of CI\$348,210.00. She concluded that such a sum was inadequate having regard, in particular, to the needs of the wife. The judge ordered the husband to pay CI\$650,000. The fundamental issue in the appeal was whether the judge's award of that sum was within the legitimate range of awards available to her: in other words, the appeal essentially concerned the judge's exercise of her discretion.
5. The Court of Appeal concluded, for the reasons it set out, that the award was within the range of awards available to her.

*Does the proposed appeal raise a question of great general or public importance?*

6. As it seems to me, this proposed appeal raises no question of great general or public importance.

7. First, as I have set out, the Court of Appeal was required to consider whether the judge was entitled to exercise the undoubted discretion she had in the way she did. That raises no issue of principle.
8. Second, the argument that the first instance judge was bound by the figures she had previously indicated does not seem to me to raise any arguable point of law. Moreover, it does not raise a question of great or public importance.
9. Third, the argument that the pre-nuptial agreement constrained the judge from making the award she did, again relates to the exercise by the judge of her judicial discretion and seems to me to raise no arguable point of law of great or public importance meriting consideration by the Judicial Committee of the Privy Council.
10. There are no other reasons to grant leave.
11. In short, for the reasons I have shortly set out, I would refuse leave to appeal.

*The application for a stay*

12. I see no reason in the circumstances why there should be a stay in respect of the C\$650,000. As I understand it, the husband has only paid C\$212,304.03, some C\$171,905.07 short of the sum of C\$384,210.00 which, on any view he was obliged to pay. In my view, the husband should continue to make payments in accordance with the order of the judge dated 23 August 2021.

*Costs*

13. The wife is entitled to her costs of this application. While I am sympathetic to the application for indemnity costs, it does seem to me that they should be on the standard basis.

**The Rt Hon Sir Allan Moses, Justice of Appeal**

14. I agree.

**The Hon C. Dennis Morrison, Justice of Appeal**

15. I also agree.