

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

**CICA (Civil) Appeal No. 1 of 2022
(Formerly G 2 of 2014)**

BETWEEN:

AB

Proposed Appellant

AND

C

Proposed Respondent

BEFORE: **The Rt. Hon Sir John Goldring, President
The Hon Sir Michael Birt, Justice of Appeal
The Rt. Hon Sir Jack Beatson, Justice of Appeal**

Appearances: **The proposed Appellant in person (via Video-link)
Mr Jonathan Jones QC instructed by Ms Kim Grandage of KSG
Attorneys for the Guardian ad Litem/Next Friend.
Ms Claire Allen, Deputy Solicitor General, Next Friend
Ms Natasha Partos of Campbells LLP for the proposed
Respondent**

Heard: **10 May 2022**

Draft judgment Circulated: **17 May 2022**

Judgment delivered: **19 May 2022**

JUDGMENT

The Rt. Hon Sir Jack Beatson, JA

1. The applicant, is the plaintiff in long running litigation against C (“the defendant”) as a result of an accident at work in which he suffered severe injuries. The trial was listed for 6 days commencing on Friday 18 February 2022.

2. On 17 February 2022, the day before the trial, Ms Kim Grandage of KSG Attorneys, the plaintiff's legal representatives, filed a summons inviting the court to determine before the trial, as a preliminary issue, whether or not the plaintiff is a patient within the meaning of section 2 of the Mental Health Act (2022 Revision) and, if he is, to appoint a person to act as the Plaintiff's Next Friend. She did so as a result of receiving two reports dated 16 February 2022 from Dr Wayne Kampers, the plaintiff's first psychiatric expert.
3. The summons was heard by Justice Carter on 18 February 2022. Following the hearing, the judge declared the plaintiff to be a patient and appointed the Solicitor-General or her representative to act as his Next Friend in the conduct of the proceedings as required by GCR Order 80 rules 2 and 3. On Saturday 19 February 2022 the Next Friend accepted the defendant's payment into court and settled the plaintiff's claim against the defendant subject to the court's approval. The approval hearing was on 22 February 2022. Justice Carter considered the advice to the Court by Mr Jonathan Jones QC and Ms Grandage who were instructed by the plaintiff's Next Friend as to the appropriateness of accepting on the plaintiff's behalf payments into court made by the defendant. She also heard submissions from Mr Jones, some of which were made without the defendant or its legal representatives being present. Following this she approved the settlement.
4. The judge's Order dealing with all these matters is dated 23 February 2022. Paragraphs 1 and 2 declare the plaintiff to be a patient within the meaning of section 2 of the Mental Health Act (2022 Revision) and appoint the Solicitor-General or her representative to act as his Next Friend. Paragraph 3 states that "*The Plaintiff's claim against the Defendant shall be settled on the terms set out in the Schedule*" attached to the Order and that "*The terms of the settlement are approved by the Court*". The Schedule records that the defendant paid sums into court: on 22 February 2019 and on 10 February 2020 and that these payments were in addition to interim payments.
5. Paragraphs 5 - 7 of the Order state that the defendant shall pay the plaintiff's costs until 1 March 2020 and from 2 March 2020 the plaintiff shall pay the defendant's costs capped at US\$500,000, both to be taxed on the standard basis if not agreed. The Order also provided that its provisions in respect of the defendant's costs were not to apply to any costs incurred in any challenge by the plaintiff to the settlement agreement or any attempt

by him to bring further claims arising out of or in relation to the accident or to the assessment of costs in accordance with paragraphs 5 and 6 of the Order.

6. On 21 February 2022 the plaintiff indicated his desire to appeal against the decisions but filed his Notice of Appeal on 10 March 2022. He therefore seeks leave to appeal out of time. He does so “*in relation to the settlement in this case*” (that is paragraph 3 of the Order) and in relation to the declaration that he is a patient and the appointment of a Next Friend (that is paragraphs 1 and 2 of the Order). His skeleton argument, dated 14 March 2022, also seeks a stay of the Judge’s Order pending the appeal. On 23 March 2022 the single judge, Morrison JA, refused leave on the papers. The plaintiff’s renewed application for leave out of time came before this Court on Tuesday, 10 May 2022. Before the hearing, the Plaintiff informed the court that Mr. Jones QC and Ms Grandage no longer represented him. He stated that he does not see how they have his best interests at heart and that they were helping the defendant and not him in what he described as forcing him to accept the amount of money paid into court by the defendant.
7. The court heard from the plaintiff and his mother who both joined the hearing remotely. Ms Claire Allen, the Deputy Solicitor General, the Next Friend, and Mr. Jones QC also joined the hearing remotely. Ms Grandage was present in court on behalf of the Guardian and, at the court’s request, so was Ms Natasha Partos of Campbells LLP, the defendant’s attorneys. I summarise the submissions and observations of the plaintiff and his mother below. The court did not call on the Deputy Solicitor General, Mr. Jones QC, Ms Grandage or Ms Partos, but it did ask Mr Jones questions about the Schedule to the Order containing the terms of the settlement. With the consent of the Deputy Solicitor General, a copy of the advice given by Mr Jones and Ms Grandage for the approval hearing was provided to the court on the condition that it is not shown to the defendant. The Court was also assisted by a joint note by Mr Jones QC and Ms Partos on its jurisdiction to hear the plaintiff’s application for leave to appeal.
8. Before turning to the parts of the Order which are the subject of this application, I give some context about the procedural history and the way the issue of the plaintiff’s litigation capacity arose. The underlying proceedings were issued in 2014. The defendant subsequently admitted liability with quantum to be assessed.

9. Trial dates listed for March and September 2020 were adjourned due to the covid-19 pandemic and a further listing for 22 February 2021 was adjourned on 15 January 2021. Shortly after that there was a change in the plaintiff's representation. His former attorneys, Travers Thorp Alberga, were replaced by KSG Attorneys who came on the record on 29 January 2021. The trial was then listed for a window in November 2021. In June 2021 applications were made for an interim payment and for permission to adduce further expert evidence. Following hearings in chambers on 13 September 2021 and 18 January 2022, in judgments delivered on 20 October 2021 and 2 February 2022 the application for an interim payment was granted but those for permission to obtain further expert evidence were rejected.
10. Both these judgments contained sensitive personal information about the plaintiff's injuries and health. During the hearing the plaintiff informed us that they were both published as unreported cases on the judicial website, as was the judgment declaring him to be a patient. He stated that people in these islands were able to read the judgments and had been contacting him about them and defaming him. The court was sympathetic to his complaints about this. At the conclusion of the hearing, the President stated that, although it might be rather late in the day, he had asked for the judgments to be taken down from the website while the matter was investigated. He also stated that in future in cases such as this, consideration should be given to providing an anonymised version of a judgment which did not reveal the identity of the plaintiff.
11. For present purposes, the important aspect of the earlier decisions was the application for permission to instruct a second psychiatric expert. The plaintiff had lost confidence in Dr Kampers because *inter alia* of a change of opinion by him. In reports dated March 2014 and November 2019 Dr Kampers stated that the plaintiff's injuries severely disabled him and impacted on all aspects of his daily living and meant that he was unfit to work in any capacity but in his joint statement with Professor Neil Greenberg, the defendant's expert, dated 26 February 2020 stated that the plaintiff "*currently has some capacity for work*". The plaintiff maintained that he had lost confidence in Dr Kampers because he had agreed the joint report without seeing surveillance footage on which Professor Greenberg relied.

12. The judge considered the circumstances of the plaintiff's case in the light of the guidance in *Stallwood v David* [2006] EWHC 2600 (QB), [2007] 1 All ER 206, [2007] RTR 11 about instructing an additional expert. In *Stallwood v David*, Teare J. stated at §§ [17] – [21] that the mere fact that an expert has changed or modified his opinion does not suffice. Permission to instruct an additional expert should only be given where there is good reason to suppose that the applicant's first expert has agreed with the expert instructed by the other side or has modified his opinion for reasons which cannot properly or fairly support his revised opinion. In §50 of her 20 October 2021 judgment the Judge stated that Dr Kampers had the plaintiff's confidence until the release of the joint statement and there was nothing before her to cause her to doubt his professionalism. She concluded that without Dr Kampers' full explanation for his changed opinion she could not find that the plaintiff had shown good reason for needing an additional psychiatric expert.
13. In the light of this and pursuant to an order by the court, on 25 November 2021 the plaintiff sent Dr Kampers questions seeking a full explanation for his changed opinion and apparent reliance on the surveillance footage and the fact that the plaintiff was then in a relationship. As to the latter, the plaintiff maintained that it was inconsistent of Dr Kampers to rely on this when the plaintiff had been in a relationship when he was first examined by Dr Kampers in 2014.
14. Dr Kampers' response is contained in a document dated 21 December 2021. He stated that he evaluated the plaintiff's condition on 16 March 2020, after the joint report was produced, and informed the plaintiff's former attorneys then that he had reservations about the prognosis in the joint report. He had recommended a more detailed psychiatric (personality) assessment with a view to amending the joint statement and was concerned about the plaintiff's capacity and decision-making in this litigation context. He also considered that the previous joint report should be nullified because neither expert had seen a number of emails the plaintiff's former attorneys had received over "*the last couple of years*".
15. The judge's reasons for rejecting the application for permission to instruct a second psychiatric expert are set out at §§17-37 of the judgment delivered on 2 February 2022. She stated at [18] that it had been confirmed that Dr Kampers had evaluated the plaintiff again after the joint report, made his own observations and assessments, and then

informed the plaintiff's then attorneys of his reservations about the prognosis. The judge accepted at [19] that the plaintiff might have had reason to feel aggrieved if his expert had committed himself to findings based on surveillance footage that he had not seen and at [27] that the full extent to which Dr Kampers relied on that footage to change his views was still not clear to the court. But she also stated (see [27]-[28]) that Dr Kampers had disavowed the joint report and, in his later assessment of 30 March 2020, expressed an opinion more in keeping with his previous assessments of the plaintiff. As to the point based on the fact that the plaintiff was in a current relationship, the judge stated at [35] that was not inconsistent. Her reason was that, contrary to what the plaintiff had said to Dr Kampers and which formed at least part of his assessments in 2017 and 2019, Dr Kampers was later confronted with the fact that the plaintiff had been in a relationship or relationships since his March 2014 report. She concluded (at [37]):

“The factors surrounding the two limbs of the plaintiff’s application for a second psychiatric expert both the surveillance evidence and the evidence of the plaintiff being in a relationship are not straight forward. However, there is before the court information which goes some way to explain Dr Kampers’ change of opinion as evidenced by the joint assessment report. I do not agree that Dr Kampers’ change of mind was for illogical or irrational reasons. I find that there is an explanation for his change of mind.”

16. For these reasons, the judge rejected the application for permission to instruct a second psychiatric expert. Because she considered that psychiatric evidence was essential to the plaintiff's case, she directed that he should submit to a further assessment by Dr Kampers before trial. Dr Kampers' assessment took place on 10 February 2022. I have stated that it was his two subsequent reports both dated 16 February 2022 which led Ms Grandage to make the application concerning the plaintiff's litigation specific capacity that the judge considered as a preliminary issue on 18 February 2022.
17. In the first of those reports, Dr Kampers set out the two-stage test of capacity in the Mental Health Act and the questions which in practice it can be helpful to ask. He stated that the assessment of capacity is “*task-specific*”, that the focus must be on the specific decision that needs to be made at the specific time it is required, and that it does not matter that the person retains capacity to make other decisions. He also referred to the difficulty

Professor Greenberg and he had found in their most recent assessments of the plaintiff, and that Professor Greenberg had stated that in his last review he was not properly able to assess the plaintiff's capacity to litigate. Dr Kampers' conclusion was that in view of the concerns set out in his report about the plaintiff's current mental state particularly his paranoid beliefs, his concern was that those would be his only focus within a court hearing and as such he was concerned about the plaintiff's reasoning ability in that context. He recommended that the court assess the plaintiff's current capacity to litigate. His report also stated:

“I had previously mentioned consideration to the role of a litigation friend, and I had mentioned [the plaintiff's] mother but given her recent presentation and the dynamics between her and her son I did not think that she would enable the litigation and be capable of acting in her son's best interests.”

18. In the second of his reports dated 16 February 2022, Dr Kampers set out the questions he considered in assessing the plaintiff's current capacity to litigate. He considered that his paranoid mental state and beliefs would interfere with his capacity to understand the legal issues and circumstances that have given rise to his case, the decisions and processes involved in the court proceedings, the vitiating factors which may have to be relied on in the litigation, and the arguments for and against the litigation. He concluded that the plaintiff is a mental health patient within the provisions of the Cayman Islands Mental Health Act and that, for the reasons outlined in the report, in his professional opinion the plaintiff *“lacks litigation specific capacity”*.
19. I turn to the present application. The Judge's Order is dated 23 February 2022 and so the Notice of Appeal on 10 March 2022 is outside the 14 days from the date of the order required by section 19(1) of the Court of Appeal Act 2011 revision. Section 24(a) of the Act enables the court to extend time and CA Rule 11(6) requires leave to be given for an application to appeal out of time. As Morrison JA observed when refusing leave, no application for leave was made to the judge below as rule 21(4) of the Court of Appeal Rules requires but sensibly no point was taken about this.
20. I agree with Morrison JA's statement about the approach to be taken to an application for leave to appeal out of time. He set out the three established criteria: (a) the length and

reasons for delay, (b) the merits of the proposed appeal, and (c) the potential for prejudice to the proposed respondent. These criteria are also reflected in the decision of Smellie CJ in *Streeter & K Coast Development v Immigration Board* [1999] CILR 264 which was relied on in the joint note by Mr Jones and Ms Partos on the jurisdiction of this court to hear the plaintiff's application for leave. In *Streeter & K Coast Development*, after reviewing the English authorities, Smellie CJ stated that the court should not, on purely procedural grounds, prevent an appeal which had a realistic prospect of success from being heard, and, in any event, should permit an appeal to proceed which it was in the public interest that the Court of Appeal should examine. I also agree with Morrison JA that, in the present case, since the applicant represents himself, the issue of delay (which was only for a very short time) can be ignored. Moreover, in the light of the timing of the application for the court to determine whether the plaintiff was a patient and the Next Friend's decision on the day after the hearing to accept the payment in, little weight should be given to the potential of prejudice to the defendant from an appeal. Accordingly, as Morrison JA stated, "*the only question which remains is whether the applicant has an arguable appeal*".

21. Of the two matters the plaintiff raises in this application, logically, the court should first deal with the plaintiff's application for leave to appeal against the declaration that he is a patient. That is because, as stated in paragraph 3(a) of Mr Jones and Ms Partos's joint note on the jurisdiction of this court to hear the plaintiff's applications, in the event that this court dismisses the application for leave to appeal against the order declaring him a patient, paragraphs 1 and 2 of the Order so doing and appointing the Next Friend will be effective.
22. At the hearing of the summons to determine whether the plaintiff is a patient, the judge had before her the 4th affidavit of Ms Grandage and the exhibit to it. The evidence in the exhibit consisted of Professor Greenberg's second report dated 21 January 2022 based on his assessment of the plaintiff via Zoom on 19 January 2022 and Dr Kampers' two reports dated 16 February 2022. Ms Grandage's affidavit referred to Dr Kampers' earlier reports concerning the Plaintiff in 2014, 2017 and 2019 in which he concluded that the Plaintiff had capacity. It also referred to the more recent developments I summarised earlier including what Dr Kampers stated in the two reports dated 16 February 2022 and at §25 to Dr Kampers' opinion about the suitability of the plaintiff's mother as a litigation friend.

23. At §26 of her affidavit, Ms Grandage stated that she was not aware of any other family members or friends of the plaintiff who could be suitable for the role. She stated that she had asked the plaintiff and his mother whether there was anyone who they believed would be suitable for the role but at the time she swore her affidavit they had not responded. GCR Order 80 rule 3(7) provides that “*if it appears to the Court that there is no fit and proper person who is willing and able to act as next friend or guardian ad litem for a person under disability, it shall appoint the Solicitor General*”. In view of this provision, Ms Grandage stated at §28 of the affidavit that she put the Solicitor General on notice of the application, that the Solicitor General’s office “*indicated that they may be willing to assist, and we have asked that they attend Court at the start of the trial on 18 February 2022*”.
24. At the hearing, the judge heard submissions from Mr Jones QC, who submitted that, in the light of the authorities and Dr Kampers’ evidence, the plaintiff’s attorneys had no choice other than to make the application. He also submitted that because the plaintiff disputed that he lacks capacity, it was absolutely necessary for the court to make a determination: Transcript pp 4 and 9. The defendant, represented by Mr Harry Steinberg QC at the hearing, took a neutral position in relation to the application.
25. The judge considered three authorities: see §12 of her decision. The first was *Masterman-Lister v Brutton & Co* [2002] EWCA Civ. 1889, [2003] 3 All ER 162. She referred to Chadwick LJ’s statement at [62] that the test of mental capacity is issue specific. See also Kennedy LJ’s statement to the same effect at [27]. The second authority referred to by the judge was *Folks v Faizey* [2006] EWCA Civ. 381, [2006] All ER (D) 83. In that case, Keene LJ stated at [25] – [26] (a) that if the court is to be more than merely a rubber stamp, it is necessary for there to be evidence to support any application for an order appointing a litigation friend, and (b) “*where the proposed ‘patient’ disputes the need for and appropriateness of the appointment of a litigation friend there can be an issue to be tried*”. The third decision referred to by the judge was *Hinduja v Hinduja* [2020] EWHC 1553 (Ch), [2020] 4 WLR 93. In that case Falk J stated at [36] that “*mental capacity is assumed unless the contrary is proved, and the burden is therefore on [the applicant for an order to establish lack of capacity]*”.

26. As well as the reports exhibited to Ms Grandage’s affidavit, the judge heard oral evidence via Zoom from Dr Kampers, the plaintiff and the plaintiff’s mother. The 107 page transcript of the hearing shows that the plaintiff, through the judge, raised many issues about Dr Kampers’ findings as did his mother. As to those raised by the plaintiff, see e.g. transcript pp 44 - 46 as to why Dr Kampers changed his mind, pp 49 - 50 in relation to the psychologist Dr Zayas-Bazan and pp 62 - 66 and 73 - 76 about the reality of matters on which Dr Kampers said he is paranoid. At transcript p 79, Dr Kampers stated that the plaintiff’s evidence did not alter his opinion about the plaintiff’s inability to litigate and that *“if anything, it confirms all of the concerns I have”*.
27. The judge stated at §10 of her decision that she considered the oral and written evidence of Dr Kampers in detail and that she was in a position to observe the plaintiff’s demeanour during the hearing. As to the latter, at §11 she referred to the plaintiff’s repeated attempts to discuss matters that had no or little bearing on the issue of capacity to litigate that was before the court as opposed to his capacity to manage his day-to-day affairs. These included his insistence that the court should be considering the reports of Dr Zayas-Bazan, the psychologist who treated him while he was in the United States, who had been interviewed by Dr Kampers and whose views were taken into account in one of Dr Kampers’ earlier reports. They also included the court’s previous rulings on his applications for permission to instruct a second psychiatrist.
28. The judge carefully summarised Dr Kampers’ evidence at §§15-20. In these paragraphs she stated that Dr Kampers had expressed concerns about the plaintiff’s capacity to litigate after he interviewed him in March 2020 and that he had great difficulty in trying to explain to the plaintiff why he needed to be interviewed because the plaintiff was very angry and mistrustful. Dr Kampers also stated that the plaintiff was paranoid about many things: he believed there were conspiracies against him and that he was mistrustful of his legal team, the court process, the experts involved, and himself. Dr Kampers’ evidence described the plaintiff displaying a *“mistrust of everybody and everything”*. At §18 the judge stated that Dr Kampers’ had reiterated that *“it is only in respect of litigation he lacks capacity and not in respect of managing his life. [He has] capacity in everyday life but capacity specific issue is where issue lies. He knows what to eat, clothes, normal day to day life, no issue of capacity in that respect”*. At §19 she referred to Dr Kampers’ finding that the plaintiff lacked the ability to think through a decision non-impulsively

and did not display reasoned flexible thinking because his fixed or paranoid ideas that lawyers or experts were against him or in a conspiracy.

29. At §20 the judge found that the application was a bona fide one and at §21 concluded that:

“There is sufficient evidence before me to conclude that the Plaintiff is a patient within section 2 of the Act being a person ‘who is suffering from or are suspected to be suffering from mental impairment’. I find that the Plaintiff’s paranoid mental state and beliefs will interfere with his capacity to litigate and understand the entirety of the proceedings. I believe that his mental state and beliefs will interfere with his ability to litigate in what is a complex and complicated case or to properly weigh up the arguments for and against litigation. The Plaintiff’s paranoid mental state and belief will also interfere with his capacity to understand a vitiating factor or factors upon which he may have to rely on in the course of the instant proceedings.”

The order that the plaintiff was to be a patient for the purpose of the litigation followed from this conclusion, and the judge appointed the Solicitor-General or her representative as the plaintiff’s Next Friend in the conduct of these proceedings.

30. The plaintiff submits that he did not get a fair trial in the consideration of this matter. In his skeleton argument he made two points. The first was that Dr Kampers specifically asked in an earlier report that his mother might be his litigation friend but that the application did not seek this and that at the hearing Mr Jones and Mr Steinberg considered that she did not need to speak. The second is that he *“just got to speak for a few minutes in response to Dr Wayne’s testimony”*.
31. At the hearing the plaintiff stated that the question of his capacity was first raised three days before the hearing on 18 February 2022. He stated that the judge fell into error because earlier reports from two experts, Dr Spencer Eth and Dr Zayas-Bazan, the psychologist who treated him while he was in the United States, did not raise his capacity. There was no reference to paranoia or lack of capacity in their reports. He argued that they had more credentials than Dr Kampers, whose 2014 and 2019 reports about him did not raise the issue of his capacity to litigate but who changed his opinion in the reports which led to this application. The plaintiff observed that the defendant’s psychiatric

expert Professor Greenberg did not consider that he lacked capacity and also stated that Mr. Jones QC lobbied Dr Kampers and told him what to say in his recent reports. In summary, his argument on capacity was that Dr Kampers was not entitled to say that he needed a Next Friend, that this was all done at the last moment very shortly before the trial was due to start, and that the judge, who had denied all his requests for additional evidence, was wrong to appoint the Solicitor General or her representative as his Next Friend.

32. The plaintiff's mother also referred to Dr Kampers changing his reports. She stated that the plaintiff had no record of mental illness in the Cayman Islands and, had he not suffered the injuries, he would have progressed and been promoted at work. She said that Dr Spencer Eth and the other doctors who examined the plaintiff saw no psychiatric injury except PTSD and that Dr Spencer Eth's report was suppressed and not considered by the judge. She also stated that the plaintiff's extensive injuries and the fact that he has been labelled mentally ill mean he cannot get a job in the Cayman Islands and, because he cannot get medical insurance, he cannot return to these Islands from the UK. In these circumstances, it was unfair to give him US\$ 3.5 million to last him until he is 65.
33. As to the plaintiff's submission that he only got to speak for a few minutes in response to Dr Kampers' testimony, the transcript shows from page 40 that the plaintiff spoke extensively. I have given examples of the issues about Dr Kampers' evidence he raised. He was also able to put questions to Dr Kampers through the judge. She took care to ensure that Dr Kampers answered the points raised by him. There are also comments and interventions by the judge including questions to Dr Kampers, and by Mr Jones.
34. As to Dr Kampers' previous view that the plaintiff's mother might be the plaintiff's litigation friend, I have referred to Dr Kampers' reservations about the suitability of the plaintiff's mother in the first of his two reports dated 16 February 2022. The judge heard evidence from the plaintiff's mother and was able to form a view as to her suitability as his Next Friend.
35. It is, as Morrison JA stated, clear from the judge's full analysis that she carefully considered the submissions of counsel, the relevant authorities, and the evidence of Dr Kampers and of the plaintiff before coming to the conclusion set out above. She also

heard evidence from the plaintiff's mother. Her conclusion was one that was clearly open to her on the law and the evidence. If my Lords agree, the application for leave to appeal out of time against paragraphs 1 and 2 of the Order will be refused because it has no realistic prospect of success.

36. As to the application for leave to appeal against paragraph 3 of the Order, the plaintiff's skeleton argument maintains that his claim is worth more than was awarded, and that many relevant documents, reports and photographs which gave a true picture of his catastrophic injuries were excluded in putting forward the claim. At the hearing he stated that the Deputy Solicitor General contacted him on Saturday 19 February 2022, the day after she was appointed his Next Friend. She did not advise him or ask for his opinion but just told him she would accepting the offer. The approval hearing was very soon afterwards, on Tuesday 22 February 2022. He submitted that the schedule of loss, although for a substantial amount, did not contain all the matters relevant to the extent of his claim. He argued that all the excluded documents contributed to his claim being "*significantly reduced.*" He also made complaints about the conduct of his lawyers, including in relation to their fees.
37. If my Lords agree with my conclusion that there is no realistic prospect of success in an appeal against paragraphs 1 and 2 of the Order, it is not necessary to consider the application for leave to appeal against paragraph 3 of the Order which approved the terms of the settlement reached by the Next Friend and the defendant. Paragraph 3(b) of Mr Jones and Ms Partos's joint note on the jurisdiction of this court to hear the plaintiff's application for leave submits that if there is to be no appeal against paragraphs 1 and 2 of the Order then the Solicitor General has been appointed as the plaintiff's Next Friend and would have to bring any application for leave to appeal in that capacity. Accordingly, the submission is that in those circumstances this Court does not have jurisdiction to consider an application by the plaintiff.
38. Whether or not this court lacks jurisdiction, on the material before us I do not consider that the plaintiff has any realistic prospect of success in an appeal against paragraph 3 of the Order. My view is not based on the fact that the complaints of the plaintiff, who is now unrepresented, about the amount of the settlement and the conduct of his various lawyers are unparticularised. It is based on my consideration of the very detailed advice

of Mr Jones QC and Ms Grandage which was before the judge when she approved the settlement as an appropriate compromise. The advice sets out the perceived strengths and weaknesses which Mr Jones and Ms Grandage saw with each of the heads of his claim very clearly. Although it deals with all the heads of the plaintiff's claim, it focussed, in particular on his condition and prognosis and his likely country of residence which it described as the two key issues to determine. In the light of this opinion, I consider that the judge was clearly entitled to approve the settlement.

39. For these reasons, if my Lords agree, assuming the court has jurisdiction to determine an application by the plaintiff for leave to appeal against paragraph 3 of the Order it is refused.

The. Hon Sir Michael Birt, JA

40. I agree.

The Rt. Hon Sir John Goldring, President

41. I too agree.
42. I would only add that this judgment should not be reported until and unless it has been anonymised. That is something which, I am afraid, will have to be done by counsel.