



Neutral Citation Number: 2025 CICA (Civ) 5

**IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

**Civil Appeal No. 0025 of 2023
(Formerly FSD 269 of 2023 (NSJ))**

BETWEEN:

IGCF SPV 21 LIMITED

Claimant/Respondent

-and-

**(1) AL JOMAIH POWER LIMITED
(2) DENHAM INVESTMENT LTD**

Defendants/Appellants

BEFORE:

The Hon John Martin KC, JA
The Hon Sir Richard Field, JA
The Rt Hon Sir Anthony Smellie

Representation

Bedell Cristin Cayman Partnership for the Appellant
Graham Chapman KC instructed by Dillon Eustance, Cayman for
the Respondent

Decided on the papers

Judgment delivered: 28 February 2025

**RULING ON COSTS IN RESPECT OF APPELLANTS' APPLICATIONS FOR
LEAVE TO APPEAL TO THE PRIVY COUNCIL (JCPC) AND A STAY FOR
PENDING APPEAL**

Sir Richard Field, JA

Introduction

1. Following the Court's dismissal on 10 October 2024 of the Appellants' appeal against the order of Segal J restraining the Appellants from continuing proceedings against the

CICA (Civil) Appeal 25 of 2023 IGCV SPV – Ruling re Costs (Application for Leave and Stay)

Respondent in the High Court of Sindh in Pakistan (“the Pakistan Proceedings”), the Appellants applied by summons for leave to appeal the Court’s 10 October decision to the JCPC as of right, alternatively in the discretion of the Court, and for a stay of Segal J’s order pending appeal or pending determination of an application for an injunction in the Grand Court restraining the Respondent, inter alios, from taking steps leading to a change of control of K-Electric Limited (“KEL”), a publicly listed utility company incorporated in Pakistan.

2. The Appellants’ proposed grounds of appeal advanced in support of their stay application dated 21 June 2024 were that: (1) this Court had erred in finding that there was no material risk of inconsistent findings of fact made in respect of : (a) those issues that could be decided against other parties in the Pakistan Proceedings and issues that were determinable in a trial in Cayman Island proceedings as to the control and (b) as to whether the approval of the Pakistan Government and/or regulatory authorities is required for a putative change of ownership or control of KEL; and (2) in deciding to uphold Segal J’s decision that the Respondent had not submitted to the jurisdiction of the High Court of Sindh, this Court had erred in holding that it would not follow the decision of the English Court of Appeal in *Henry v Geoprosco International Limited* [1976] 1 QB 726 (“*Geoprosco*”).
3. In the event, the Appellants did not pursue contentions 1 (a) and (b) in their written submissions in support of their application for leave to appeal to the JCPC. Instead, in support of their case that they were entitled to appeal as of right pursuant to section 3(1)(a) of the Cayman Islands (Appeals to Privy Council) Order 1984 (“the 1984 Order”), the Appellants contended first that their proposed appeal involved directly or indirectly a claim to, or a question respecting, a right to bring proceedings in Pakistan whose value exceeded £300 as demonstrated by inter alia the fact that KEL, the ownership and control of which was in issue between the parties, had been valued at USD 1.77 billion and that it was “common ground” that the rights and obligations that the parties owed to each other under the Shareholders Agreement dated 15 October 2008 (“the SHA”) made between the Appellants and the Respondent, were extremely valuable.

4. In the alternative, the Appellants submitted that they had an appeal as of right founded on the award of USD 25,000 damages against them by Segal J at the trial of the Respondent's Originating Summons for breach by the Appellants of the exclusive jurisdiction clause contained in Clause 25.2 of the SHA.
5. The Appellants further submitted that this Court should grant discretionary leave to appeal under section 3 (2) (a) of the 1984 Order on the ground that the decision not to follow *Geoproscos* was wrong and was of great general or public importance.
6. The primary ground advanced in support of the Appellants' application for a stay pending appeal to the JCPC was that, in the absence of a stay, the appeal would be rendered nugatory because the Respondent, acting by Mr. Shaheryar Chishty, whose company Sage Venture Group Limited ("SVGL") had acquired the one voting share in the Respondent, would in the interim obtain control of KEL and use the same to pursue commercial objectives for his personal benefit and to the detriment of KEL.
7. In the alternative, as related above, the Appellants applied for a stay pending an action they would bring in the Grand Court in conformity with clause 25.2 of the SHA for an injunction restraining an unlawful change of control of KEL ("the action stay").
8. The Respondent contested each and every one of the contentions advanced by the Appellants in support of both applications.
9. This Court rejected the Appellants' submission that its appeal involved a right whose value exceeded £300, finding that the Appellants had signally failed to establish that such was the value of the postulated right having regard to those authorities that made it plain that the fact that an appellant might benefit financially by more than £300 if their putative appeal succeeded is insufficient to satisfy the requirements of section 3(1)(a) of the 1984 Order, strictly construed as it must be.
10. The Court also rejected the Appellants' application for a stay pending appeal to the JCPC on the grounds that : (i) it was unlikely that the appeal would be decided within about 15 months, and it could well be longer; (ii) Segal J's order had already been effectively stayed for about 15 months; (iii) the appeal, limited as it is to the question whether the Court erred in declining to follow *Geoproscos*, only just crossed the

arguability threshold; and (iv) the risk of irrecoverable harm to the Appellants if no stay were granted was decidedly on the small side.

11. However, the Appellants succeeded on their contentions that: (i) they had a right of appeal on the ground that the appeal involved “directly or indirectly a claim to ... a right of the value of £300” by reason of the USD 25,000 damages awarded against them by Segal J; (ii) they should have discretionary leave to appeal the decision not to follow *Geoproscro* in deciding to uphold Segal J’s finding that the Respondent had not submitted to the jurisdiction of the High Court of Sindh. They were also granted a stay of five months (“the limited stay”) to allow them to apply in proceedings brought in the Cayman Islands for, inter alia, an injunction against the Respondent taking any action that would result in a change of control as defined in the SHA on condition that such proceedings were to be commenced without delay.

The Court’s jurisdiction to award costs in proceedings brought before it.

12. This Court’s power to award costs derives from section 24 of the Judicature Act that provides that, subject to the provisions of that Act and to rules of court, the costs of and incidental to all civil proceedings in the Court of Appeal and the Grand Court, shall be in the discretion of the court.
13. Rule 28 of the Court of Appeal Rules (2014 Revision) stipulates that the powers and discretion of the Court under section 24 of the Judicature Act shall be exercised subject to and in accordance with the provisions dealing with costs contained in GCR Order 62, the overriding objective of which is “that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by the successful party in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court (see O 62,r 4 (2)).
14. O 62, r 4 further provides that if the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

15. The broad discretion that the Court has in the matter of costs means that the range of costs orders it might make in respect of applications for leave to appeal and for a stay pending appeal is wide, extending from “no order as to costs”; “costs in favour of one of the parties” or for a “stated proportion of the costs incurred by a party” ; and, particularly in leave to appeal applications, “costs in the appeal”.

The parties’ submissions as to the appropriate costs orders on both applications.

The Appellants’ case

16. The Appellants submit that they should have their costs of both applications on the ground that they were successful in each of them, the Court having held that: (i) they were entitled to appeal to the JCPC as of right on the basis of the USD 25,000 damages awarded against them by Segal J; (ii) leave should be granted in the discretion of the Court to challenge the decision not to follow *Geoprosco* on the issue of submission to the jurisdiction of the Sindh High Court; and (iii) the anti-suit injunction granted by Segal J should be stayed for five months allowing the Appellants to bring injunction proceedings in the Cayman Islands courts restraining the Respondent from taking any action that would result in a change of control as defined in the SHA.
17. The Appellants contend that they should be treated as the winning party on their stay application notwithstanding that the Court dismissed their primary case that they were entitled to a stay pending their appeal to the JCPC. In support of this submission, reliance is placed on the following observations made in one case by Simon Brown LJ and in another by Clarke J cited by Gloster J in *HLB Kidsons (a Firm) v. Lloyds Underwriters* [2007] EWHC 2699 (Comm) at [10]-[11], “the court can properly have regard to the fact that in almost every case the winner is likely to fail on some issues”¹ and “it is a fortunate litigant who wins on every point”².
18. In addition, the Appellants cite paragraph 25 of CJ Smellie’s judgment in *A.B. Junior v M.B.* [2013] CIGC J0614:

¹ *Budgen v. Andrew Gardner Partnership* [2022] EWCA Civ 1125 at [35]

² *Travelers' Casualty v. Sun Life* [2006] EWHC 2885 (Comm) at [12]

“As to the specific question of the nature of the costs jurisdiction, I recognise its wide discretionary nature given in the GCR notwithstanding the mandate of rule 4(5) that costs follow the event. The real task for the court here is to identify what the real event or outcome was and to reflect that in terms of a fair award in costs and it is in that regard that the rules are meant to be flexible, allowing for a wide discretion.”

19. The Appellants contend that if this Court is not minded to award them their full costs of the stay application, they should be awarded a reduced percentage of such costs in accordance with GCR O. 62, r 4 (7) (a) or, at the very least, the order should be no order as to costs.

The Respondent’s case

20. The Respondent contends that the normal rule where leave to appeal is granted is that the costs order on the underlying application is “costs in the appeal”. In support of this submission the Respondent relies, inter alia, on:
- (i) Birt JA’s observation in paragraph 11 of his judgment in *Cowan & Anor v Carmody* [2020 (2) CILR 938]: “*Whilst I accept that a more normal order would have been “costs in the appeal,” so that the costs of the application for leave would have been dealt with in the same manner as any costs of the substantive appeal, costs decisions are pre-eminently a matter of discretion for the judge at first instance*”;
 - (ii) Following Birt JA’s aforesaid observation, Doyle J’s dictum in paragraph [8] of his judgment in *Botes v Clark*³ : “... in the context of the costs of an application for leave to appeal, the more normal is that the costs of the application for leave to appeal will be left to the Court of Appeal.”
 - (iii) Paragraph 4 of the Certificate of Order in *Select Vantage Inc v CIMA*⁴ ordering that the costs of applications for leave to appeal and a stay pending appeal be costs in the appeal reflecting the scheduled reasons given by the late C Dennis Morrison JA refusing leave to appeal on two specified grounds of appeal but granting leave in respect of a third ground of appeal.
21. In the Respondent’s submission, rather than the normal order of costs in the appeal in respect of the leave application, the Respondent should have its costs of resisting the application in light of the following:

³ (Unreported, Cause No, 93 of 2021, dated 11 October 2022)

⁴ CICA Civil Appeal No. 22 of 2017.

- (i) The Appellants abandoned two grounds of appeal to which the Respondent had had to respond.
- (ii) The Appellants lost on the main issue argued *viz* the monetary value of the right involved in the claim in Pakistan.
- (iii) The point founded on the damages awarded against them on which the Appellants succeeded was the fortuitous outcome of the Appellants having wrongfully commenced proceedings in Pakistan in breach of the exclusive jurisdiction clause and was a subsidiary to the primary relief sought, namely an anti-suit injunction to restrain a substantial part of the Pakistan Proceedings.
- (iv) The discretionary leave obtained by the Appellants was not on the basis that there was any legal merit in the appeal but because an appeal could be a good opportunity for the JCPC to issue general guidance about when (if ever) the courts of the Cayman Islands are obliged to follow non-binding English Court of Appeal authority.

Discussion and Decision

The order for costs on the Appellants' application for leave to the JCPC

22. Whilst the Appellants failed to advance the pleaded grounds of appeal set out in paragraph 2 (1) (a) & (b) above and lost that part of their case that they were entitled to appeal as of right based on the value of KES, they did succeed on their contention based on the award of USD 25,000 damages made against them by Segal J and on their contention that they should have discretionary leave to challenge this Court's decision not to follow *Geoprosc* in deciding whether the Respondent had submitted to the jurisdiction of the Pakistan Court.
23. In my judgment, in these circumstances, the order for costs on the Appellants' application for leave to the JCPC should be "Appellants' costs in the appeal" and there should be no costs order in favour of the Respondent.

The order for costs on the Appellants' stay applications

24. The Appellants lost on their application for a stay pending appeal to the JCPC and on their alternative application for the action stay pending an action brought by them in the Grand Court for an injunction restraining the Respondent other parties from taking any action that would result in a change of control as defined in the SHA.

25. What they were granted by the Court acting on its own initiative was the limited stay of five months granted to achieve in an action in the Grand Court the grant of an injunction restraining the Respondent other parties from taking any action that would result in a change of control as defined in the SHA.
26. In my judgment, taking into account that: (i) in deciding to grant the limited stay the Court was not persuaded by much of the argument advanced by the Respondent in opposition to the application for the action stay, which argument was relevant to whether the limited stay should be granted; and (ii) the Respondent was the successful party on the stay application pending an appeal to the JCPC, the Respondent should have 60% of the costs it incurred in resisting the Appellants' stay applications.

Sir Anthony Smellie

27. I agree

The Hon John Martin KC

28. I also agree