



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO. G167 OF 2023 (IKJ)**

**IN THE MATTER OF THE MONETARY AUTHORITY ACT (2020 REVISION)**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

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**BETWEEN:**

**ABC**

**Applicant**

**-and-**

**CAYMAN ISLANDS MONETARY AUTHORITY**

**Respondent**

**IN CHAMBERS**

**Before:** The Hon. Justice Kawaley

**Appearances:** Mr. Peter Hayden and Mr Luke Burgess-Shannon of Mourant Ozannes (Cayman) LLP for the Applicant

Ms Jodie Woodward and Ms Oneka Thompson of the Cayman Islands Monetary Authority for the Respondent

**Heard:** 27 February 2024

**Date of decision:** 27 February 2024

## INDEX

*Application for leave to appeal-test for granting leave*

## EX TEMPORE JUDGMENT

### Introductory

1. This is an application for leave to appeal in respect of a decision that was made on the 12 January 2024, on the hearing of a Summons for Directions that was filed on the 28 November 2023. The Judicial Review proceedings started by the Applicant related to an administrative decision made by the Respondent on the 2 August 2023. The Judicial Review proceeding was started on 14 September 2023.
2. The Notice of Motion was promptly taken out on 15 September 2023, the next day. But rather than the Notice of Motion being issued with a return date so that, as contemplated by the return date of the Notice of Motion would serve as the hearing date for directions, there was no return date. And so the proceedings drifted. The Applicant only took out a Summons for Directions after allowing the normal time under the Rules for filing responsive evidence to expire and after having effectively told the Respondent it was too late to file any evidence.
3. And against this background the matter came before me on the 12 of January 2024, and I made the decision against which leave to appeal is sought.

### Governing Principles

4. The governing principles are essentially agreed. The position has been stated perhaps most clearly by Morrison JA, in *Select Vantage Incorporated- v- Cayman islands Monetary Authority* [2017 (2) CILR N 4]; Civil Appeal 22/2017, Judgment dated 21 September 2017 (unreported):

*240227- ABC v Cayman Islands Monetary Authority (CIMA) – G167 of 2023- Ex Tempore Ruling – Anonymized for Publication*  
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*“26. The general rule is that leave to appeal will be given only in the case of an appeal with a realistic (as distinct from a fanciful) prospect of success. In exceptional circumstances, leave may also be given if there is an issue which, in the public interest, should be examined by the Court of Appeal. Leave will generally not be given in the case of an appeal against a judge’s exercise of a discretion (unless it can be shown to have been palpably wrong)...”*

5. Ms Woodward has added a further gloss, namely that the Court can, even if a proposed appeal has a realistic prospect of success, decline to grant leave where it would be inconsistent with the officiant conduct of the litigation for an interlocutory appeal to be pursued.

### **Merits of application**

6. In this case, in my judgment, Mr Hayden has identified a valid point of principle which I broadly accepted as having general application. The question in terms of evaluating the merits of the grounds of appeal is whether or not there is an arguable point of law to the following effect. A judge on the hearing of a summons for directions, when a new point of principle is raised for the first time, is not entitled to decline to apply the new principle but is required to inflexibly be guided by it.
7. In this case, having regard for the Overriding Objective, I decided that it was inappropriate to introduce for the first time an approach to extending time and time limits which had never before been applied or recognised in the Cayman Islands.
8. In these circumstances, rightly or wrongly, I characterise the substance of the decision that was made to allow the Respondent an extension of time without making a formal application to be a predominantly case management, discretionary decision. On that basis, I find that the appeal has no realistic prospect of success.
9. In reaching that conclusion, I acknowledge that the Court of Appeal (or a single judge of the Court of Appeal hearing) a renewed application may well take a different view. But because in my judgment it would be inconsistent with the proper case management of these proceedings to allow an interlocutory appeal of this nature.

10. It seems to me the Court of Appeal would be the best judges of whether this proposed appeal does in fact, raise a point which in the public interest should be heard and which might be viewed as a matter which should be clarified by the Court of Appeal at this stage, notwithstanding the view that I have taken of merits of the application.
11. I should add that if I had taken a different view of the merits of the appeal and be minded to grant leave, I would have, reluctantly, granted a stay. But looking at all things in the round, I am unable to find any proper basis for granting leave, despite the typically skilful way in which the application has been advanced by Mr Hayden.

### **Disposition**

12. The application is refused, and costs must follow the event and be awarded to the Respondent.



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**THE HONOURABLE MR JUSTICE IAN RC KAWALEY  
JUDGE OF THE GRAND COURT**