

**The Hong Kong and Shanghai Banking Corp Ltd (Appellant) v Bettas Ltd
(Respondent)**

Ruling in relation to JCPC/2025/0055

Lord Briggs, Lord Burrows, Lord Stephens

Charles J, sitting in the Supreme Court of the Bahamas, 2011/CLE/gen/1598, in a judgment dated 5 April 2023, ordered The Hong Kong and Shanghai Banking Corp Ltd (“HSBC”) to account for, and transfer to, Bettas Ltd the funds in its HSBC account. As recorded in the formal order issued by the Supreme Court Registrar, Charles J also included in his order two awards of interest in favour of Bettas Ltd. They were as follows:

(i) *“interest on the funds held by [HSBC], from the commencement of proceedings to the date of the Judgment; such interest to be heard and determined by a Judge in Chambers, if not agreed”*; and

(ii) *“interest at the statutory rate of 6.25% per annum from the date of Judgment to the date of payment on the funds held to its order”*.

HSBC appealed to the Court of Appeal of the Bahamas on various grounds but did not appeal against either of those two awards of interest. The Court of Appeal, SCCivApp No 95 of 2023, in a judgment dated 27 March 2024, dismissed the substantive parts of HSBC’s appeal although it did vary the costs order so that, instead of Bettas Ltd being awarded the costs of the Supreme Court action, each party was required to bear its own costs of that action.

After the Court of Appeal’s ruling, the appellant (HSBC) sought permission to appeal on the single issue of whether the judge erred in ordering *both* awards of interest (ie (i) and (ii) above). The Court of Appeal granted HSBC leave to appeal to the Judicial Committee of the Privy Council.

The Judicial Committee of the Privy Council (here comprising Lord Briggs, Lord Burrows and Lord Stephens) asked HSBC for a brief submission (not exceeding 10 pages) within 21 days and allowed Bettas Ltd to reply (with similar brevity) within 14 days thereafter as to whether the appeal would be contrary to the principle of finality in litigation. This is because the challenge to the awards of interest on which permission to appeal was sought (and granted by the Court of Appeal) was a new ground not taken on the appeal below.

Having received and read the submissions of both parties, the Board strikes out HSBC’s appeal as an abuse of process. This is because it is contrary to the principle of finality in litigation for an appellant to take a new point on appeal that could reasonably have been taken before the court below but was not taken. No good reason has been given by the appellant explaining why the interest ground of appeal was not raised on the appeal to the Court of Appeal. It is now too late to do so. Although the Board has a discretion as

to whether to allow a new point to be taken on appeal, there is no good reason here to permit the appeal to go ahead solely on a new point.

It is noteworthy that Bettas Ltd strongly objected to the appeal going ahead and explained why it would suffer prejudice if the appeal were allowed to proceed.

Where there has been an abuse of process, the Board has the power to strike out an appeal (without an oral hearing) even where there is an appeal as of right or where permission to appeal has been granted by the Court of Appeal. This was made clear in *Rogelio Antonio Hawkins v Abarbanel Ltd* [2025] UKPC 58, para 67. See also *Lincoln Bain v Zinnia Rolle* [2025] UKPC 49, paras 11-19.

The Board therefore humbly advises His Majesty that HSBC's appeal should be struck out.

For completeness, it may be helpful to add here that, in relation to JCPC/2025/0055 A, the same panel of the Board refuses Bettas Ltd permission to cross-appeal the variation of the costs order made by the Court of Appeal. That cross appeal raises a pure question of the exercise of a costs discretion by the Court below. It raises no arguable point of law.

Lord Burrows

27 January 2026