

CANADA / JUDGMENT

Hussein v. Qazi

2026 ONCA 296

COURT

Court of Appeal for Ontario

DECIDED

27 April 2026

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Hussein v. Qazi Collection Decisions of the Court of Appeal Date 2026-04-27 Neutral citation 2026 ONCA 296 Docket numbers COA-25-CV-1355 Judges Paciocco, David M.; Copeland, Jill M.; Dawe, Jonathan Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Hussein v. Qazi, 2026 ONCA 296 DATE: 20260427 DOCKET: COA-25-CV-1355 Paciocco, Copeland and Dawe JJ.A. BETWEEN Madiha Hussain Applicant (Respondent) and Salik Javed Qazi Respondent (Appellant) Stephen R. Jackson and Anna C. Johnson, for the appellant Arian Monadjem and Ocean Yam Enbar, for the respondent Heard: April 10, 2026 On appeal from the order of Justice Gisele M. Miller of the Superior Court of Justice, dated September 10, 2025. REASONS FOR DECISION

- [1] The appellant, Madiha Hussain, and the respondent, Salik Javed Qazi, jointly purchased a residential property in Mississauga as tenants in common. The respondent contributed the initial capital outlay and received a 99 percent interest. The appellant undertook to make “contributions” to the housing costs through “sweat equity” and by making payments to a share of the carrying costs, including a share of the monthly mortgage payments. In return he received a one percent interest in the property as well as the right to 50 percent of the increase in the property’s value after contributing for five years. The relationship soon failed, and the appellant moved out and stopped paying, but not before contributing a meaningful amount to housing costs.
- [2] The respondent brought an application seeking an order under the Partition Act, R.S.O. 1990, c. P.4, that would direct the appellant to sell his one percent interest to the respondent at a value determined by the court. Among other relief that is not material to this appeal, she also sought payment of amounts the appellant failed to pay pursuant to their agreement.
- [3] The application judge determined that the Partition Act did not authorize a buy-out order, only an order of partition and sale. After respondent’s counsel produced the authority of *Newton v. Newton*, 2014 ONSC 2757 at the hearing, the application judge made an equitable vesting order pursuant to s. 100 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as had been done in *Newton*. Although this relief had not been pleaded and the suggestion of an equitable vesting order had not been raised before the hearing, the application judge engaged in two exchanges with the appellant prior to making that order in which the

appellant communicated that he did not disagree with transferring his one percent interest if he was to be compensated fairly. The appellant claimed to be owed \$65,976.19. The application judge determined his compensation to be \$16,357.61 by quantifying his share of the home's equity (\$2,500) and his contributions (\$33,816.91 plus \$5,122.53) and then subtracting funds the respondent had to contribute after the appellant ceased making payments (\$25,081.83). She therefore made the vesting order and ordered that the appellant be paid \$16,357.61.

- [4] The appellant now appeals the decision. He has raised multiple grounds of appeal relating to the fairness and legality of the vesting order, arguing in substance that it was based on an inapplicable precedent and a misapprehension of his position after an unfair hearing in which he was not given a meaningful opportunity to respond. He also argues that the application judge lacked the evidentiary record to declare the value of the property. Should his appeal of the vesting order not succeed, the appellant also seeks leave to appeal the application judge's costs award, arguing generally that it was made without proper regard for the relevant principles and in a procedurally unfair manner.
- [5] The respondent argues that this court does not have jurisdiction to hear this appeal as the amount at stake is below the \$50,000 monetary floor provided for in the Courts of Justice Act: see ss. 6(1)(b)(i), 19(1)(a) and 19(1.2)(a). We do not agree. If an order grants non-monetary relief as the order under appeal did, an appeal will lie to this court even where the monetary payment at issue falls below that floor: *Hanisch v McKean*, 2014 ONCA 698, 325 O.A.C. 253, at paras. 12-13, 19-31.
- [6] The respondent also argues that the appeal is moot. In support of this submission, she offers fresh evidence confirming that in the absence of an application for a stay of proceedings pending appeal by the appellant, she registered the vesting order with the Land Registry Office on October 22, 2025, making her the sole owner of the property.[1] It is acknowledged before us that the respondent took this action knowing that an appeal was pending and that the appellant was taking steps to perfect a motion for a stay pending appeal.
- [7] The respondent is correct that once a vesting order is registered on title, the change in title has been effected and the appeal rights are spent, such that disputes respecting the registered title must be resolved under the rubric and within the scheme of the Land Titles Act, R.S.O. 1990, c. L.5: *Regal Constellation Hotel Ltd. (Re)* (2004), 71 O.R. (3d) 355 (C.A.), at paras. 39-40. The appellant did not seek relief before us under the Land Titles Act as the appellant appeared to do, in the alternative, in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2018 ONCA 253, 141 O.R. (3d) 192. Since this court cannot grant the relief requested relating to the vesting order, on its face the appeal of the vesting order is moot: *Regal Constellation*, at paras. 33, 39. The appellant nonetheless asks us, in substance, to exercise our discretion, recognized in *Borowski v. Canada (Attorney-General)*, [1989] 1 S.C.R. 342, at p. 353, to rule on the issues he raises.

- [8] It is exceptional for the court to hear moot issues in an appeal. The onus lies with the party seeking a determination on the merits to show “why the court should depart from its usual practice of refusing to hear moot appeals”: *Tamil Co-Operative Homes Inc. v. Arulappah* (2000), 49 O.R. (3d) 566 (C.A.), at para. 17. In deciding whether to exercise this discretion, the court will be guided by such factors as the presence of an ongoing adversarial context, concerns for judicial economy, and the need for the court to be sensitive to its proper adjudicative role: *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 S.C.R. 3, at para. 18. These factors are neither rigid nor exhaustive, and discretion must be exercised with a view to the circumstances of each case: *Tamil Co-Operative Homes*, at para. 17. With respect to judicial economy, it may be necessary to devote scarce judicial resources to a moot question, for example, where there is a sufficiently high “social cost in leaving the matter undecided”: *Borowski*, at p. 362. This may occur where the issues in dispute are of significant public importance, or where they are “recurring in nature, but of brief duration” and therefore evade review: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, 510 D.L.R. (4th) 195, at paras. 55-56.
- [9] The appellant bases his request on the fact that the mootness problem has arisen because of a tactic used by the respondent to make it so; because a ruling by this court relating to the vesting order may be of assistance in an application by him for rectification of the Land Titles Act registration; and on his submissions about the strength of the appeal.
- [10] Without in any way suggesting that the conduct of respondent’s counsel was unethical, we do agree with the appellant that there is unfairness in registering a judicial vesting order knowing that the appellant was not only seeking to exercise their right of appeal but was also taking steps to stay the vesting order pending appeal. After Blair J.A. recognized in *Regal Constellation*, at para. 45, that given the sanctity of title, remedies after registration are limited to the remedies provided under the Land Titles Act, he commented at para. 49: I do not mean to suggest by this analysis that a litigant’s legitimate rights of appeal from a vesting order should be prejudiced simply because the successful party is able to run to the land titles office and register faster than the losing party can run to the appeal court, file a notice of appeal and a stay motion and obtain a stay. These matters ought not to be determined on the basis that “the race is to the swiftest”. Notably, Blair J.A. did not suggest that this court should purport to resolve a moot vesting issue where this has occurred but called instead for consideration of legislative reform: *Regal Constellation*, at para. 49. In our view, the unfairness that occurred does not provide us with a basis for adjudicating an issue that must now be resolved using the Land Titles Act. It is, however, a matter that can affect the costs award on this appeal.
- [11] We are not prepared to address the merits of the grounds of appeal relating to the granting of the vesting order based on the remaining considerations raised before us. In the circumstances of this case, it is not in the interests of justice or judicial economy to rule with a view to facilitating a possible Land Titles Act application, or to even adjourn the appeal to accommodate such an application. There can be no realistic suggestion that substantive

injustice would occur if rectification of title is not ultimately made. The material grounds of appeal raised focused on the procedural fairness of the hearing and the technical foundation for the order. On its face, the outcome is eminently fair. The respondent, who now has title to the entire property, previously owned a 99 percent interest in that title. She is the one who alone provided the entire initial, substantial sum needed to fund its acquisition. She is also the one who has assumed responsibility for the ongoing carrying costs. Joint ownership was agreed upon to provide a joint residence, but that relationship is over. Meanwhile, the appellant expressed his agreement with the application judge during the hearing to the very order he now impugns. So long as the appellant is fairly compensated for his interest and the contributions he made, the appellant is in no position to challenge the fairness of a vesting order. Further, we can consider his appeal relating to the fairness of the compensation without hearing a moot appeal of the vesting order. In short, this is not the kind of moot issue where expending scarce judicial resources to consider its merits is justified. Finally, we note that the issues relating to the vesting order are not matters of public interest. Indeed, the public interest is often best served by finality in matters arising from domestic relationships, as is the case here. We do not serve anyone's interest by facilitating the perpetuation of litigation between the parties.

- [12] We therefore decline to hear the moot appeal relating to the vesting order. We do note, however, that we should not be understood by doing so as endorsing the application judge's decision relating to the use of s. 100 of the Courts of Justice Act to make a vesting order. The appeal of the vesting order is denied, as moot.
- [13] With respect to the only remaining issue in the appeal relating to the compensation ordered by the application judge, we are not persuaded that she lacked sufficient evidence to determine fair compensation, or that she erred in her determination. This ground of appeal is also denied.
- [14] Finally, no basis has been identified for granting leave to appeal the application judge's costs award. Leave to appeal costs is therefore denied.
- [15] The appeal is therefore dismissed. We decline to award costs to the respondent. "David M. Paciocco J.A." "J. Copeland J.A." "J. Dawe J.A."
- [1] The admission of the registration document as fresh evidence is not opposed, and it is admitted. Issue was taken with the remaining documents included in the application. It is unnecessary to determine their admissibility, and we decline to do so.

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