

HONG KONG / JUDGMENT

In re LUWAGGA ISMA

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CACV 768/2026, [2026] HKCA 1742 On appeal from

[2026] HKCFI 4099 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CIVIL APPEAL NO 768 OF 2026 (ON APPEAL FROM HCAL
321/2021)

RE: LUWAGGA ISMA Applicant

Before: Hon Barma JA and Alex Lee J in Court Date of Hearing: 7 September 2026 Date of
Judgment: 29 September 2026

J U D G M E N T

Hon Alex Lee J (giving the Judgment of the Court): 1. This is an appeal against the decision of Deputy High Court Judge Michael Wong (“ the Judge ”) given on 21 July 2026 [1] (“ the Leave Decision ”) refusing to grant leave for the applicant to apply for judicial review. The intended judicial review was against the decision of the Torture Claims Appeal Board/adjudicator of the Non-Refoulement Claims Petition Office (“ the Board ”) dated 11 February 2021 (“ the Board’s Decision ”) dismissing the applicant’s appeal against the decision of the Director of Immigration dated 18 September 2018 rejecting the applicant’s non-refoulement claim. 2. The applicant’s background, the basis of his claim and the Board’s reasons in reaching the Board’s Decision have been set out therein [2] as well as by the Judge in the Leave Decision at [23]-[32], which will not be repeated. 3. After considering the documents filed by the applicant as well as the oral submissions he made at the hearing of the leave application, the Judge dismissed the application for the reasons stated at [14]-[36] of the Leave Decision. Appeal to this court 4. In a Notice of Appeal dated 24 July 2026, the applicant claimed that he would face hardship should he return to Uganda, and inter alia that the Board “has significantly relied on the source of news which is not officially recognised”. 5. By written submissions dated 10 August 2026, the applicant referred, inter alia , to the well-established principles in ST v Director of Immigration (sic) [3]

[2014] 4 HKLRD 277, Secretary for Security v Sakthevel Prabakar

[2005] 1 HKLRD 289, R v Home Secretary, ex parte Doody

[1994] 1 AC 531 and R v Home Secretary, ex parte Bugdaycay [1987] 1 AC 514. 6. We heard the appeal on 7 September 2026, at which the applicant appeared in person. At the hearing, the applicant stated that he has submitted some new evidence to the Court, including “videos and pictures” of an unknown date (which had come to his possession sometime in August 2026) which apparently showed that his friend in Uganda was abducted by the local government and was shot. He emphasised that he is fearful of returning to Uganda as the local government arrests and abducts all dissidents and opponents. 7. First, this court has not in fact received the applicant’s “videos and pictures”. In any event, as the applicant’s new evidence had not been placed for consideration before the Board and the Judge, this Court will not consider the same for the purpose of determining this appeal, but will determine the same based on the materials filed by the applicant as well as his oral submissions at the hearing. Discussion 8. As this court has often stated, an appeal to the Court of Appeal is not a fresh application for judicial review. It is necessary to identify some error on the part of the judge that would justify this court in intervening: see *Nupur Mst v Director of Immigration*

[2018] HKCA 524 at [14]. The court will not intervene by way of judicial review unless there are errors of law or procedural unfairness or irrationality in the decision of the Board. An appeal is not the occasion for regurgitating arguments advanced and rejected by the judge or for running arguments which could and should have been raised but were not raised before the judge. In the determination of an appeal, the Court of Appeal focuses on the decision of the judge and the court will only reverse that decision if an appellant could demonstrate that the judge made errors of law or failed to take account of relevant matters already placed before the court or was otherwise plainly wrong. 9. The applicant has failed to identify any error on the part of the Judge and thus failed to raise any viable ground of appeal. The points advanced by the applicant were bare assertions unsupported by particulars or evidence. 10. In the present case, the Board considered the applicant’s claimed fear of harm from the Ugandan government and a rebel group named Rwenzururu Kingdom to be unsubstantiated on the evidence, as he was not an active opponent of the government and there was no cogent evidence showing that the applicant had (as claimed) betrayed the rebel group. Thus, there was no real risk of harm or ill-treatment upon the applicant’s return to Uganda. These were findings open to the Board, and were sufficiently canvassed and considered by the Judge in the Leave Decision at [14]-[36]. We see no basis to interfere. 11. Further, there was no attempt by the applicant to elaborate on whether and, if so, how the trite principles referred to in his written submissions had not been applied by the Judge or by the Board in the determination of his claim. 12. The applicant has accordingly failed to demonstrate how the Board had acted unlawfully or procedurally unfairly in reaching its Decision, or how such Decision could be said to be *Wednesbury* unreasonable. 13. As we have noted, the applicant advanced no viable grounds of appeal against the Judge’s decision. There is therefore no merit in the appeal and we dismiss the appeal accordingly. (Aarif Barma) Justice of Appeal (Alex Lee)

Judge of the Court of First Instance The applicant, unrepresented, appearing in person [1]

[2026] HKCFI 4099 [2] https://legalref.judiciary.hk/doc/judg/html/vetted/other/en/2021/HCAL000321_2021_files/the_Board's_Decision.pdf [3] The correct citation should be ST v Betty Kwan .

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