

HONG KONG / JUDGMENT

LYMC v. LCW**[2019] HKFC 118****COURT**

Family Court

DECIDED

9 May 2019

CASE / FILE NUMBER

FCMC13526/2015

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FCMC 13526/2015

**[2019] HKFC 118 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 13526 OF 2015**

BETWEEN LYMC Petitioner and LCW Respondent

Coram : Her Honour Judge Grace Chan (paper disposal) Date of written judgment: 9 May 2019

JUDGMENT

(Leave to appeal)

Introduction

By his summons dated 14 March 2019, the respondent husband seeks to appeal the following orders made by me: The order dated 1 February 2019 dismissing his application for leave to appeal the 4 Orders as defined at [4] of the written judgement of the same date (“Leave Refusal Order”); The summary assessment of the costs in the sum of \$40,000 payable by him to the wife out of his share of net sale proceeds of the matrimonial home which was paid into the family court pursuant to an order of 20 December 2018 (“Summary Assessment Costs Order”). I have already handed down 2 written judgment dated 27 November 2018 and 1 February 2019 respectively on the husband’s previous applications for leave to appeal, in which the background of the case and the procedural history have been set out sufficiently at [5]-[19] of the first written judgment and [6]-[7] of the 2nd written judgment. But at the risk of repeating myself, I shall very briefly state that the petitioner of this case is the former wife of the respondent. They have 2

children born within their wedlock, whose care and control rested with her. During the financial dispute resolution (FDR) held before me on 20 December 2016, the parties settled the ancillary relief matters by agreeing, among other things, to sell the jointly-owned matrimonial home and to share the net profit thereof, and out of the husband's share, he would pay periodical maintenance for the benefit of the children. Their settlement was later made into a consent order of this court on 23 December 2016. Subsequent to this consent order, various directions/orders were made for the enforcement of the sale of the matrimonial home. At those material times, the matrimonial home was occupied by the husband but he refused to move out of it. After the consent order of 23 December 2016, the husband lodged 2 rounds of appeal against various directions and orders made by me and more particularly defined in the aforesaid 2 written judgment. His previous leave to appeal applications were all dismissed by me. This is his 3rd round of appeal of my orders arising out of the 2nd written judgment. Section 63A(2) of the District Court Ordinance provides that leave to appeal shall not be granted unless the intended appeal has a reasonable prospect of success or that there is some other reason in the interests of justice that the appeal should be heard. The relevant test of whether an appeal has a reasonable prospect of success is whether the applicant for leave can show that he has an arguable case with reasonable chances of success on appeal. A reasonable prospect of success therefore means an appeal with prospects that are more than "fanciful" but which do not need to be shown to be "probable" (See: *SMSE v KL* [2009] 4 HKLRD 125; *KNM v HTF*, HCMP 288/2011). Discussion The husband originally served his summons on the former solicitors acting for the wife. But as at the time of his summons, the wife is acting in person. I therefore directed him to serve on her direct, to which he did so subsequently and proved by his affirmation of service dated 1 April 2019. The wife has not filed any papers in reply to the husband's draft grounds of appeal within 14 days of the service. I do take note that the husband is a litigant in person, but still I have to say that his draft grounds of appeal are unfocused and on the whole unrelated to the orders that he now seeks to appeal. Many of the paragraphs are mere repetitions of his draft grounds of appeal in relation to his previous applications for leave to appeal. For example, he says that the wife's behaviour is molestation and harassment to him and that she is negligent in failing to maintain him. He asks that periodical payment be made to him by her. Such draft grounds of appeal simply cannot stand up to any reasonable chance of success in his intended appeal application. Further, it is trite to say that he cannot lodge an application for leave to appeal against my order refusing his leave to appeal, ie the Leave Refusal Order. If he is not satisfied with the Leave Refusal Order, he might have renewed his application before the Court of Appeal. His draft grounds of appeal do not contain any ground(s) as to how I have exercised my discretion wrongly in making the Summary Assessment Costs Order. Notably, the wife, while still represented by her former solicitors, submitted 4 sets of statements of costs (each in the sum of \$31,370 inclusive of costs and disbursements) and asked that such costs be assessed on an indemnity basis, but I awarded costs to her only on party and party basis. I refer to [35]-[40] of the 2nd written judgment dated 1 February 2019 explaining why I made the costs order that the husband should bear the wife's costs on party and party basis of that leave to appeal application. Further, I have explained in the letter of 6 March 2019 addressed to the parties as to why I made a summary assessment of a global sum of \$40,000, which for easy reference, shall be re-produced below: "RE: Summary

assessment of costs pursuant to order made on 1/2/2019 in respect of the respondent's applications for leave to appeal This court shall repeat the observation in para 38 of the Decision of 1/2/2019, and take the view that it is not necessary for the wife/petitioner to prepare 4 separate written submission, the content of parts of which are repetitive. The appeal applications are not complicated. The time claimed is excessive. Taking a broad brush approach by way of summary assessment, I shall assess the costs of the 4 separate bills of costs in one global sum of \$40,000, to paid out of the respondent husband's share of the net sale proceeds which was paid into court pursuant to the order of Deputy Judge To dated 20/12/2018." Upon due consideration, I conclude that there is no reasonable prospect of success in his intended appeal. Leave to appeal should thus be refused. I shall make no order as to costs of this application. Grace Chan District Judge
The petitioner (wife) acting in person The respondent (husband) acting in person

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