

HONG KONG / JUDGMENT

NPYJ v. SMRC

[2026] HKCA 572

COURT

Court of Appeal

DECIDED

31 March 2026

CASE / FILE NUMBER

CAMP98/2024

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CAMP 97 & 98/2024, [2026] HKCA 572

On Appeal From [2023] HKFC 233 & [2024] HKFC 30

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO. 97 & 98 OF 2024

(ON AN INTENDED APPEAL FROM FCMC NO. 9098 OF 2018)

BETWEEN

NPYJ

Petitioner

and

SMRC

Respondent

Before : Hon Cheung and Anthony Chan JJA in Court

Dates of Written Submissions: 4 June 2024 and 20 March 2025

Date of Judgment : 31 March 2026

JUDGMENT

Hon Anthony Chan JA (giving the Judgment of the Court) :

Introduction

There are a number of applications before this Court made by the respondent husband (“H”) in the context of protracted matrimonial proceedings between himself and the petitioner wife (“W”).

By a Summons filed on 4 June 2024 in CAMP 97/2024 (“CAMP 97 Summons”), H renews his application for leave to appeal against Orders made in FCMC 9098/2018 by District Judge CK Chan (“Judge”) pursuant to Decisions dated 6 November 2023 (“Decision (1)”) and 24 November 2023 (“Decision (2)”).

By Decision (1), the Judge dismissed H’s application to adjourn the hearing on 6 November 2023 in respect of (i) H’s Summons dated 11 January 2023 for, inter alia, for the valuation of certain limited companies, the determination of the beneficial ownership of two landed properties and certain limited companies, and the joinder of W’s sister (“M”) and others to the matrimonial proceedings (“Summons (1)”); (ii) H’s Summons dated 20 June 2023 for a Hadkinson order to dismiss and/or stay W’s applications for ancillary relief until her compliance with certain interim access orders (“Summons (2)”); and (iii) W’s Summons dated 21 June 2023 for certain parts of H’s 147th Affidavit (“Affidavit (147)”), which was filed in support of Summons (1), to be expunged from the court files (“Summons (3)”). Collectively, the Summonses are referred to as “3 Summonses”.

The hearing of the 3 Summonses proceeded on 6 to 7 November 2023 in the absence of H. By Decision (2), the Judge dismissed Summonses (1) and (2), and largely allowed Summons (3).

H’s application in the court below for leave to appeal against the Orders made under Decisions (1) and (2) was dismissed by the Judge on 20 May 2024 (“Leave Decision (1)”).

By a separate Summons filed on 4 June 2024 in CAMP 98/2024 (“CAMP 98 Summons”), H renews his application for leave to appeal against the Order made pursuant to a Decision made in FCMC 9098/2018 by the Judge on 15 February 2024 (“Decision (3)”).

Decision (3) concerned a Summons for committal filed on 20 June 2023 by which W applied for H’s committal on the ground that he had failed to comply with an order made by District Judge KK Pang (“Judge Pang”) on 8 November 2022, which required him to file and serve his updated Form E by 13 January 2023 (“Committal Application”). By Decision (3), the Judge found that H had purged his contempt in the late afternoon on the day before judgment on the Contempt Application was to be delivered, and H was ordered to pay W’s costs of the Committal Application, which was summarily assessed on an indemnity basis in the sum of HK\$160,000.

H's application in the court below for leave to appeal against the Order made under Decision (3) was dismissed by the Judge on 22 May 2024 ("Leave Decision (2)").

Under the CAMP 97 and 98 Summonses, H also respectively sought (i) a stay of all ancillary relief proceedings in FCMC 9098/2018; and (ii) a stay of execution of the costs order in connection with Decision (3). Both stay applications had since been withdrawn or become academic because (a) the ancillary relief proceedings were concluded on 13 February 2025; and (b) H had paid the sum of costs in question.

By two Summonses both filed on 23 October 2025, H seeks to amend the CAMP 97 and 98 Summonses ("Amendment Summons (97)" and "Amendment Summons (98)").

In the Amendment Summonses, H no longer requests an oral hearing for the determination of his leave applications. In any case, having considered the papers and the nature of the applications, it is appropriate for this Court to exercise the power under Order 59, rule 2A(5)(a) and rule 14A(1) of the Rules of the High Court, Cap 4A to determine these applications without an oral hearing and on the basis of the written materials filed.

The applications in the court below and the Judge's decisions

H's adjournment application

The 3 Summonses were fixed to be heard before the Judge on 6 November 2023 at 10:30am. At 9:28am on that day, the court received a letter (by hand) enclosing, inter alia, a skeleton argument and H's 155th affidavit ("Affidavit (155)") in support of an application to adjourn the hearing (see Decision (1), [1]-[2]).

H did not attend the hearing on 6 November 2023. In support of the adjournment application, H relied on medical advice from Dr Janine Braier (a clinical psychologist) and Dr Clarissa Parks (a general practitioner), which was contained in their letters dated 3 November 2023 and exhibited to Affidavit (155) (Decision (1), [2]-[3]). In gist, Dr Braier, with whose opinion Dr Parks agreed, stated that H was suffering from high stress levels and anxiety and that if he was "forced" to attend the hearing, it would exacerbate his condition, rendering it "very much more challenging to treat or recover from" (Decision (1), [4]-[5]).

The Judge declined to accept the opinion of Dr Braier for the reasons that (i) it was not determined that H was mentally incapacitated under the relevant Hong Kong (or English) legislation; (ii) there was no suggestion that H was unfit to travel to Hong Kong to attend the hearing; (iii) from the materials put before the court by H, including the skeleton argument, there was no hints of mental incapacity or difficulty on his part (Decision (1), [6]-[7]).

The Judge took the view that it was revealing that H had written to the court on 3 November 2023 asking for the hearing to be conducted via VCF (he was in England at the time). The court declined the application due to insufficient notice. This showed that H was mentally and psychologically fit and was prepared to attend the hearing (by VCF) at the time, and that his application for adjournment at the eleventh hour was suggestive of delaying tactics (Decision (1), [8]-[10]).

The Judge regarded it unreasonable for H to request the adjournment of the ancillary relief applications, which would impact on the finance to be provided to the children (two girls), pending the conclusion of the litigation on access. The delay would not be in the interests of the children.

Accordingly, the Judge refused the application to adjourn the hearing on 6 November 2023, and proceeded to determine the 3 Summonses in the absence of H.

Summonses (1)

By this Summons, H sought (i) the determination of the beneficial ownership of 7 companies; (ii) the appointment of a single joint expert for the valuation of those 7 companies and another one, AAL; (iii) determination of the beneficial ownership of two landed properties (a property in Sha Tin and, at the material times, registered in the name of W's mother ("Property (1)") and a "farm/property" in the name of W's father and/or his administrators/executors ("Property (2)")); and (iv) the joinder of W's mother, W's father (and/or his administrators/executors) and M.

The Judge noted that Affidavit (147) did not set out the grounds in support of Summonses (1). Instead, H sought to have the Summons stayed pending the outcome of his appeal against Judge Pang's dismissal of his previous specific discovery application ("Discovery Order"). Further, by Affidavit (147) (i) H's alleged that W was lying about one of the companies – SJASL – the beneficial ownership and value of which he had asked the court to determine; and (iii) H recited some WhatsApp conversations between W and M ("WhatsApp Excerpts") (Decision (2), [6] and [8]).

Regarding H's request for a stay of Summonses (1), the Judge noted that leave to appeal against the Discovery Order was dismissed by the Court of Appeal on 19 September 2023. There was thus no basis for the request (Decision (2), [6] and [9]).

As to the allegations concerning SJASL, H relied on the WhatsApp Excerpts to show that W was hiding SJASL. However, the Judge noted that there was no mention of SJASL in the WhatsApp Excerpts. The only company mentioned (twice) was "SJAS(Hong Kong)L", and it was not directly related to the substance or subject matters of the conversation between the sisters. H had also failed to adduce evidence to show whether SJASL or SJAS(Hong Kong)L existed, or how they were related to W or M (Decision (2), [10]-[12]).

As for the valuation of AAL, W had no objection to its valuation and had filed her expert report (in compliance with Judge Pang's directions dated 30 March 2023) for the preparation of a joint statement. H had failed to nominate his expert for this purpose, and was deemed to have waived his right to produce expert evidence on the valuation. Accordingly, the Judge took the view that H should not now be allowed to adduce further evidence on AAL's valuation at that late stage (Decision (2), [13]).

As for the other companies, H had provided no basis or evidence in support of the need for their valuation or the determination of their beneficial ownership (Decision (2), [14]).

As regards the determination of the beneficial ownership of Properties (1) and (2), Affidavit (147) did not set out any grounds for such determination. The Judge further noted that H had provided no address for Property (2). There was no reason for the beneficial ownership of those Properties to be determined (Decision (2), [15]).

In respect of the joinder application, Summons (1) was not served on the parties proposed to be joined. Moreover, the refusal by the Judge to determine the beneficial ownership and/or value of the companies and Properties (1) and (2) meant that there was also no basis for the joinder application. It was therefore also declined (Decision (2), [17]).

Summons (2)

H applied for a dismissal and/or stay of W's claims for ancillary relief until she complied with various interim access orders (Decision (2), [33]). In his 148th Affidavit (filed in support of Summons (2)), H claimed that W was in contempt as she had persistently failed to comply with court orders, and that she continued to abuse, alienate and damage their two daughters (Decision (2), [28]-[29]).

The Judge referred to the questions to be asked when considering whether to make a Hadkinson order as stated in *Mubarak v Mubarik* [2004] 2 FLR 932 (accepted in *CWG v MH* [2014] 4 HKLRD 141), namely, (i) whether W was in contempt; (ii) whether there was an impediment to the course of justice; (iii) whether there were any other effective means of securing compliance with the court's orders; and (iv) should the court exercise its discretion to impose conditions, having regard to (a) whether the contempt was wilful (being contumacious and continuing) and (b) the proportionality of the condition (Decision (2), [31]).

Having comprehensively considered the procedural and factual background to the making of the interim access orders which were allegedly breached by W, the Judge held that the children's refusal to see H could not be attributed to a contempt by W, and that even if there was contempt by W on access (which was not the case), W's application for ancillary relief should not be stayed given its adverse effect on the welfare of the children (Decision (2), [33]-[38]). Summons (2) was accordingly dismissed.

Summons (3)

W applied to expunge the WhatsApp Excerpts (with some exceptions) from Affidavit (147) pursuant to Order 41, rule 6 of the Rules of the District Court, Cap 336H (“RDC”). The primary bases for the application were that the WhatsApp Excerpts were predominately private conversations between W and M, that they were obtained unlawfully by H, and that they were irrelevant to Summons (1).

Based on the nature of the conversations and the fact that H had proffered no reasonable explanation for how the WhatsApp Excerpts were obtained, the Judge found that the WhatsApp Excerpts were obtained without the consent of W or M and therefore in breach of W’s right of confidence (Decision (2), [19]).

Relying on Lord Neuberger MR’s dicta at [177] of *Imerman v Tchenguiz* [2010] 2 FLR 814 (applied in *Sin Kon Fah v JBPB & Co* [2011] 4 HKLRD 45), the Judge allowed W’s application to expunge the WhatsApp Excerpts for the reasons that (i) they were irrelevant to the determination of Summons (1); (ii) they were never disclosed by H in breach of his duty of full and frank disclosure; and (iii) they were obtained in breach of W’s right of confidence (Decision (2), [22]-[26]).

Leave Decision (1)

H applied to the Judge for leave to appeal against Decisions (1) and (2), but his applications were badly out of time (by 64 days and 46 days respectively) and no application was made for extension of time (Leave Decision (1), [6]).

Notwithstanding that the Judge dismissed H’s applications solely on the ground of delay (for which H failed to provide any explanation), he proceeded to consider the merits of the applications.

In respect of the application for leave to appeal against Decision (1), the Judge relied upon the reasons set out therein (Leave Decision (1), [8]-[11]).

As regards the application against Decision (2), H’s proposed grounds of appeal only addressed the Judge’s findings in relation to Summonses (1) and (2) (Leave Decision (1), [13]).

In gist, the proposed grounds of appeal in relation Summons (1) were (i) evidence connecting SJAS(Hong Kong)L with M was adduced via H’s 133rd Affidavit (“Affidavit (133)”), which showed that she was the company’s director and shareholder; (ii) H did not fail to nominate his expert pursuant to Judge Pang’s directions dated 30 March 2023; (iii) evidence in relation to other companies which H had asked the court to determine the beneficial ownership of, and to value, was adduced in Affidavit (133) as well as H’s 131st Affidavit (“Affidavit (131)”) (neither of which was mentioned in Affidavit (147)); (iv) the court erred in finding that Summons (1) was not served on the parties to be joined when H had served his Form F (Notices of allegations in proceedings for ancillary relief); and (v) the court erred in concluding that H had breached his duty of disclosure (Leave Decision (1), [14]).

Essentially, the Judge relied on the reasons stated in Decision (2) (Leave Decision (1), [15]-[21]) and held that the proposed grounds added little of substance and had no reasonable prospect of success.

As for the grounds relating to Summons (2), H complained that the court should have found that W was in breach of the access order. Moreover, the court should not have used phrases like “H bombarding W with applications” (Leave Decision (1), [22]-[23]). The Judge, noting that H only made a bare assertion of breach of access order by W, and there being no allegation of bias of the court by H, those grounds had no merit or a reasonable prospect of success.

Accordingly, H’s Summons for leave to appeal against the Orders made under Decisions (1) and (2) was dismissed.

The Committal Application and Decision (3)

It was contended by W that H had breached the order of Judge Pang dated 8 November 2022 (“8/11/22 Order”) by failing to file and serve his updated Form E before 13 January 2023, which had delayed the trial of the ancillary relief proceedings (Decision (3), [1]). The Committal Application was heard before the Judge on 29 January 2024.

It was undisputed that in the late afternoon on 14 February 2024, the day before judgment on the Committal Application was to be handed down, H filed and served his updated Form E in belated compliance with the 8/11/22 Order.

Having considered the submissions of the parties, the Judge concluded that H had purged his contempt. As for costs, H had only purged his contempt at the very last minute, the Judge awarded costs of the Contempt Application to W, including all costs reserved, with certificate for counsel (Decision (3), [4]-[5]).

The Judge referred to and placed reliance upon the dicta of Rogers VP in *Lau Yee Ching v Wong Tak Kwong & Ors*, unrep, CACV 385/2005, 3 March 2006, that for contempt proceedings costs are normally ordered on an indemnity basis as the complainant has little to gain apart from the enforcement of the court order that had been breached. The Judge also referred to [52/1/11] of *Hong Kong Civil Procedure 2024*, wherein it was stated that notwithstanding that it is generally inappropriate to award indemnity costs without any express finding of contempt, where the contempt was admitted by the defendant and purged before the hearing, the court may so award to show its disapproval of the conduct (Decision (2), [6]).

Having considered W’s statement of costs, the Judge summarily assessed W’s costs for the Committal Application on an indemnity basis at HK\$160,000.

Leave Decision (2)

H’s primary intended ground of appeal sought to disturb the Judge’s finding that he was in contempt by breaching the 8/11/22 Order.

The Judge set out the procedural background leading to the breach of the 8/11/22 Order at [11] to [19] of Leave Decision (2). The salient points are: (i) the trial on ancillary relief (“AR Trial”) was originally fixed on 12 to 15 December 2022 (5 days) with a pre-trial review on 8 November 2022; (ii) by the 8/11/22 Order, time was extended for H to file his updated Form E to 13 January 2023, with penal notice to be endorsed, and the AR Trial was re-fixed to May 2023; (iii) H did not comply with this extended deadline, causing the adjourned AR Trial to be further adjourned; (iv) upon the grant of leave, W filed the Summons for the Committal Application on 20 June 2023; (v) on 6 November 2023, the Committal Application came before the Judge, it was adjourned for substantive hearing to 29 January 2024, with the Judge granting leave for H to file evidence in opposition and ordering H’s personal attendance at the hearing; and (vi) on 14 February 2024, H finally served his updated Form E.

Based on the above, and for the reasons stated in Decision (3), the Judge concluded that H had no reasonable prospect of success in overturning the finding that he had breached the 8/11/22 Order and was in contempt, nor overturning the indemnity costs order (Decision (3), [20]-[25]).

According, H’s application for leave to appeal was dismissed.

Amendment Summons (97)

Amendment Summons (97) has been served on W, who is acting in person. W has not responded to the CAMP 97 Summons or the Amendment Summons (97). W is deemed to have abandoned her right to lodge evidence and/or submissions in opposition to the CAMP 97 Summons pursuant to the directions made by the Registrar of Civil Appeals dated 30 September 2025. W’s lack of response to Amendment Summons (97) should not delay the determination of it. We treat the lack of response as a stance of neutrality on W’s part.

The effect of the amendments sought is that H would only be applying for leave to appeal, with the stay of the ancillary relief proceedings abandoned or withdrawn. Amendment Summons (97) also seeks to incorporate all the existing grounds of appeal set out in the “Notice and Grounds of Appeal” attached to the CAMP 97 Summons, with the addition of a new ground (4) (“Bias Ground”), namely :

“The court was improperly influenced by the fact that [H] as a former barrister in Hong Kong is well known to the courts of Hong Kong and in relation to whom over many years of litigation concerning the divorce and the welfare of his children the courts have formed an unfavourable view of him as a party to this and other litigation which has imbued in the courts an inherent bias and unfair skepticism towards him and his litigation goals. In so doing the court departed from its obligation to act independently and viewed [his] case through the prism of the unfair view this and other courts had taken of his conduct in matrimonial and other litigation.”

The Bias Ground is apparently advanced by H in response to the Judge's comment made at [23] of Leave Decision (1) that there was no allegation of bias by H (see para 38 above). Apart from the fact that the Bias Ground was not raised before the Judge, we fail to see any adequate basis for it. The matters advanced are nothing more than speculative assertions with no evidential basis in support. We see no reason to allow the Bias Ground to be raised for the first time in H's renewed application for leave.

For these reasons, we allow the proposed amendments to the CAMP 97 Summons as set out in Amendment Summons (97), save and except the inclusion of the Bias Ground in the draft Notice of Appeal annexed thereto. We make no order as to the costs of Amendment Summons (97).

Grounds in support of CAMP 97 Summons (as amended)

The proposed grounds of appeal against Decisions (1) and (2) are contained in [1], [2], [3] and [5] of the draft Notice of Appeal annexed to Amendment Summons (97), which may be summarised and consolidated into one single ground, namely, that the Judge erred in not acceding to H's application to adjourn the hearing of the 3 Summonses, and by proceeding with the hearing and determination of the applications (including making an adverse costs order against H) in H's absence, the Judge erred in law by (i) failing to adequately consider the medical grounds set out in Affidavit (155); and (ii) depriving H of the opportunity to present his case.

H has filed his 1st Affidavit dated 3 June 2024 and 2nd Affidavit dated 27 August 2024 in support of the CAMP 97 Summons.

In the 1st Affidavit, H asked for leave to file the CAMP 97 Summons out of time. That Summons was filed on 4 June 2024, which was out of time by 1 day given that Leave Decision (1) was handed down on 20 May 2024. Considering the short delay and the fact that H did not have the benefit of the full 14 days under Order 58, rule 2(4A) of RDC to renew his leave application because he was in England, we accede to H's request for an extension of time.

The 2nd Affidavit was filed in support of H's application for a stay of execution of the order made by the Judge on 19 March 2024 in FCMC 9098/2018 pertaining to case management matters in preparation for the trial of ancillary relief. It is not relevant for the present purpose.

However, there were matters stated in the 2nd Affidavit which are relevant to the present application. In gist, H deposed to the following matters :

(a)

Dr Braier and Dr Parks advised H not to attend the hearing on 6 and 7 November 2023, as he was suffering from an adjustment disorder in the form of Prolonged Grief Disorder and co-morbid anxiety disorder in the context of the traumatic loss of his children and consequent child arrangements proceedings, and was thus not in a fit state to attend court (see [15]-[21]);

(b)

A repetition of the grounds in support of Summons (1) which were rejected by the Judge (see [24]-[26]);

(c)

The Judge was wrong to have neglected evidence as stated in his Affidavits (131) and (133), by which corporate documents from the Hong Kong Companies Registry and the English Companies House were produced (see [48]-[49]). Further, the Judge was wrong to find that Summons (1) was not served on the parties to be joined when the Form F had been served (see [50]-[53]);

(d)

A repetition of the grounds in support of Summons (2) which were rejected by the Judge (see [27]-[30]). H also relies on alleged breaches by W of an order made by Judge Pang on 7 June 2023 in filing her 47th Affirmation out of time without leave of the court (see [31]-[39]);

(e)

Summons (3) was an attempt by W to conceal her assets and income, and to “syphon off the same to [M]” (see [54]-[58]).

In his Written Statement dated 20 March 2025, H (at [3]) relied on Gibson LJ’s dicta at [21] of *Teinaz v Wandsworth LBC* [2002] IRLR 721 for the proposition that where a litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, he will usually be granted an adjournment however inconvenient it may be to the court and to the other parties. The remainder of the Written Statement essentially repeated the advice given to H by Dr Braier and Dr Parks in support of the contention that the Judge had failed to adequately take their opinions into account, resulting in “a material irregularity” (see [5]-[11]). There were also references to events which took place after Decision (2) ([13]-[20]).

Amendment Summons (98)

Amendment Summons (98) has been served on W. She has not responded to the CAMP 98 Summons or the Amendment Summons (98). She is deemed to have abandoned her right to lodge evidence and/or submissions in opposition to the CAMP 98 Summons pursuant to the directions made by the Registrar of Civil Appeals dated 30 September 2025. Like the case of Amendment Summons (97), we treat the lack of response by W as a stance of neutrality (see para 49 above).

The effect of the amendments sought in Amendment Summons (98) is that H would only be applying for leave to appeal by the CAMP 98 Summons, with his prayer for other relief abandoned or withdrawn. A draft Notice of Appeal was enclosed with the Summons which encapsulates the grounds put before the Judge in the leave application below, save for the Bias Ground which was introduced at [(5)] of the draft Notice of Appeal.

For the same reasons stated in para 51 above, we would not allow the addition of the Bias Ground. With that exception, we allow the amendments to the CAMP 98 Summons as set out in Amendment Summons (98), with no order as to costs.

Grounds in support of CAMP 98 Summons (as amended)

The proposed grounds of leave against Decision (3) are contained in [1], [2], [3], [4], [6] and [7] of the draft Notice of Appeal annexed to Amendment Summons (98), which may adequately be summarised and consolidated into 3 grounds, namely: (i) the hearing the Contempt Application should not have proceeded in H's absence, which amounted to procedural impropriety; (ii) the Judge was wrong to find H in contumacious breach of the 8/11/22 Order by failing to file his updated Form E before 13 January 2023, and the Judge erred in making the costs order against him; and (iii) in any event, the summary assessment of costs on an indemnity basis was excessive and disproportionate.

H has filed a 2nd Affidavit dated 27 August 2024 in support of the CAMP 98 Summons. It is identical to the 2nd Affidavit filed in support of the CAMP 97 Summons. Insofar as relevant to the CAMP 98 Summons, H merely recited the Judge's order and findings made on 15 February 2024 and his intended grounds of appeal (at [75]-[76]).

In the Written Statement dated 20 March 2025, in support of the ground of procedural impropriety, H (at [3]-[9]) again relied on Teinaz, his medical evidence, as well as Ahmed v Rehman [2023] EWCA Civ 1504 for the proposition that a person accused of contempt should be given an opportunity to make representations at the hearing of the contempt application. In opposition against the Judge's finding of his breach of court order, H (at [10]-[14]) submitted that the Judge was wrong on the evidence to find a breach on the criminal standard of proof. As regards costs, H (at [16]-[19]) submitted that the Judge should have considered his 160th Affidavit dated 23 February 2024 (post Decision (3)) and found that he had a reasonable explanation for the delay in filing his Form E, and that the costs were grossly excessive and disproportionate.

Applicable legal principles

Section 63A(2) of the District Court Ordinance, Cap 336, provides that leave to appeal shall not be granted unless this Court is satisfied that the appeal has a reasonable prospect of success or there is some other reason in the interests of justice why the appeal should be heard (there is no reliance on the second limb in these cases).

In an application for leave to appeal against a case management decision, which is an exercise of discretion by the court, it is established principle that the applicant faces a very high hurdle. In *Wong Kar Gee Mimi v Severn Villa Ltd* [2012] 1 HKLRD 887, Kwan JA (as Kwan VP then was) held :

“31. ... Case management decisions are only subject to appeal in rare circumstances. The appellant faces a ‘very high hurdle’ and must show that the Judge ‘has gone clearly wrong and made orders which will clearly involve an injustice or an inability for the trial court to carry out its task’, or if the Judge ‘erred in principle or the order was irrational having regard to the issues that had to be resolved’. It need

hardly be emphasised that generally, an appellate court will not interfere with a judge's exercise of discretion unless the Judge has misunderstood the law or the evidence or the exercise of his discretion was plainly wrong such that it was outside the generous ambit within which a reasonable disagreement is possible."

In *West Coast International Trading Ltd trading as Dandelion Fine Arts v Chelesa Art Co Ltd*, unrep, HCMP 1228/2014, 3 September 2014, Kwan JA (as Kwan VP then was) emphasised (at [5]) that an appeal against a case management decision should not be lightly brought, as it is contrary to a sense of reasonable proportion and procedural economy promoted as one of the underlying objectives in Order 1A, rule 1 of the Rules of the High Court, Cap 4A, not to mention that the resources of the court must be distributed fairly such that the appeal court should not be concerned with unmeritorious appeals against the exercise of judicial discretion. See also: *Tao Soh Ngun v HSBC International Trustee Ltd* [2018] HKCA 691 at [57]-[67].

The Court of Appeal will also not intervene or disturb findings of fact in the court below unless they are shown to be plainly wrong. A mere assertion that the finding of the judge is against the weight of the evidence is not an error coming within that category. See *Ting Kwok Keung v Tam Dick Yuen & Ors* (2002) 5 HKCFAR 336; *China Gold Finance Ltd v CIL Holdings Ltd & Ors*, unrep, CACV 11/2015, 27 November 2015; *Young Ivy Shui Heung v Yau Koon Sum & Ors* [2019] HKCA 221.

As regards an appeal against a costs order, it is well-established that the Court of Appeal will not interfere with the judge's exercise of discretion in awarding costs unless it can be shown that the judge "failed to exercise the discretion, or exercised it upon a false principle, or did not exercise it judicially, or that the exercise of discretion was demonstrably flawed". See *Re Up Energy Development Group Ltd (in Liquidation)* [2023] HKCA 536, per Kwan VP at [8]. Unless the judge is shown to have been plainly wrong, the Court of Appeal would not substitute its discretion for that of the judge.

Discussion

The CAMP 97 Summons (as amended)

H challenges Decision (1), being the Judge's refusal to adjourn the 6 November 2023 hearing, on the bases that he failed to consider the medical opinions contained in Affidavit (155), and H was deprived of an opportunity to present his case.

For the following reasons, the challenge against Decision (1) has no reasonable prospect of success.

The Judge was plainly aware of, and did consider, the matters raised in Affidavit (155), including the medical evidence (see [2]-[7] of Decision (1)). However, the Judge took the view that the court did not have to accept the medical evidence. The court took into account the materials submitted by H which provided "no hints of mental incapacity or difficulty on the part of [H]".

Further, the Judge placed considerable emphasis on H's request to the court three days before the hearing asking for it to be conducted via VCF, which indicated that H was prepared and able to attend the hearing (via VCF) (Decision (1), [8]-[10]).

Given these facts, the Judge was "highly skeptical" whether the adjournment application was an attempt by H to delay the ancillary relief applications, and the Judge eventually refused the adjournment in the interests of the children (Decision (1), [10]-[12]).

As to H's reliance on *Teinaz*, the principles are well-established and not in conflict with those stated in *Wong Kar Gee Mimi*. Moreover, in *Teinaz* it was recognized that (i) the court is entitled to be satisfied that the inability of the litigant to be present is genuine; (ii) the onus is on the applicant to prove the need for an adjournment; and (iii) every case turns on its own particular circumstances. In the premises, we do not consider it reasonably arguable that the Judge was plainly wrong in not accepting that H was unable to attend the hearing.

Further, we note that despite H's absence, evidence and submissions in support of Summonses (1) and (2), as well as in opposition to Summons (3), had been filed by H, and were considered by the Judge.

Lastly, it must be borne in mind that Decision (1) was a case management decision made by the Judge, against which an applicant for leave to appeal faces a "very high hurdle", and must show that the Judge "has gone clearly wrong and made orders which will clearly involve an injustice or an inability for the trial court to carry out its task". For the reasons above, we are not satisfied that there is a reasonable prospect for meeting the threshold in challenging Decision (1).

Accordingly, leave to appeal against Decision (1) is refused.

As regards Decision (2), H's draft Notice of Appeal does not contain any grounds of appeal against Decision (2). We do not consider that the deficiency can be remedied by H's 2nd Affidavit, which was filed for a different purpose (see para 56 above). In any event, the matters summarised in para 57 above had been dealt with and rejected in Leave Decision (1). These arguments are not reasonably arguable.

It should also be mentioned that in Summons (2) H asked for the dismissal and/or a stay of W's claims for ancillary relief until she complied with various interim access orders. Given that the ancillary relief proceedings have since been concluded. H's intended appeal against the dismissal of Summons (2) is academic, and leave to appeal is liable to be refused on this basis alone.

Accordingly, we refuse to grant leave to appeal against Decision (2).

The CAMP 98 Summons (as amended)

The first ground relied upon by H in his intended appeal against Decision (3) is that the hearing of the Contempt Application should not have proceeded in his absence. It appears from Decision (3) that H was represented by counsel and solicitors at the hearing of the Contempt Application, although he was not personally present. There can be no question of H having been deprived of an opportunity to make representations in respect of the allegations against him. This ground has no merit.

H's next ground of appeal complains of the Judge's alleged errors in making a finding of breach of the 8/11/22 Order on his part, and in making a finding of contempt accordingly.

First, it is undisputed that the deadline imposed under the 8/11/22 Order for H to file his updated Form E was 13 January 2023. Second, H does not and cannot dispute the fact that he only filed his updated Form E on 14 February 2024, after the hearing of the Committal Application and less than 1 day before the scheduled handing down of the judgment thereof.

Based on the matters set out by the Judge at [11] to [19] of the Leave Decision (2) (see para 46 above), and the belated compliance with the 8/11/22 Order, it is not reasonably arguable that the Judge had erred in finding that H was in breach. Given the gross delay in compliance and the absence of any reasonable explanation, we also fail to see any arguable basis to suggest that the Judge's finding of contempt on the part of H was plainly wrong.

The final proposed ground of appeal challenges the Judge's assessment of W's costs on an indemnity basis.

In our view, in deciding to award costs to W on an indemnity basis, the Judge had applied the correct legal principles as set out in [6] of Decision (3). Having regard to the seriousness of H's breach, it cannot be said that the Judge was plainly wrong to find that H's contempt was "not merely technical", and that the court should show its disapproval of H's conduct by awarding costs to W on an indemnity basis given that H had only purged his contempt "at the very last minute" ([4]-[7] of Decision (3)).

We do not consider it reasonably arguable that the Judge had exercised his discretion in ordering H to pay indemnity costs upon a false principle, or that the exercise of discretion was "demonstrably flawed". See *Re Up Energy Development Group Ltd (in Liquidation)* at [8]. Nor do we find the assessment of HK\$160,000 excessive or disproportionate.

Accordingly, leave to appeal against Decision (3) is refused.

Disposition

For the above reasons, we make the following orders :

Leave to file the CAMP 97 Summons out of time;

Order in terms of Amendment Summons (97), save and except that (a) the inclusion of the Bias Ground at [(4)] of the draft Notice of Appeal annexed thereto be refused and (b) there be no order as to costs;

(c)

The CAMP 97 Summons (as amended) be dismissed with no order as to costs;

(d)

Order in terms of Amendment Summons (98), save and except that (a) the inclusion of the Bias Ground at [(5)] of the draft Notice of Appeal annexed thereto be refused and (b) there be no order as to costs;

(e)

The CAMP 98 Summons (as amended) be dismissed with no order as to costs.

As the leave applications in both sets of proceedings are wholly without merit, we make a further order pursuant to Order 59 rule 2A(8) that no party may under rule 2A(7) request the determination of these applications to be considered at an oral hearing inter partes.

(Peter Cheung)

(Anthony Chan)

Justice of Appeal

Justice of Appeal

The Petitioner acting in person

The Respondent acting in person

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