

HONG KONG / JUDGMENT

RE ASIQUE HOSSAIN

[2026] HKCA 904**COURT**

Court of Appeal

DECIDED

6 May 2026

CASE / FILE NUMBER

CACV1221/2025

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CACV 1221/2025, [2026] HKCA 904 On appeal from [2025] HKCFI 5881 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO 1221 OF 2025 (ON APPEAL FROM HCAL 2222/2020)

RE: Asique Hossain Applicant

Before: Hon Barma JA and Au JA in Court Date of Judgment: 6 May 2026

J U D G M E N T

Hon Barma JA (giving the Judgment of the Court): This is an appeal against the decision of Deputy High Court Judge KW Lung (“the Judge”) given on 9 December 2025 (“the Leave Decision”) striking out the applicant’s application for leave to apply for judicial review. The intended judicial review was (as stated by the applicant in his Form 86 filed on 6 November 2020 (“the Form 86”)) against a decision allegedly dated 14 October 2020 (“the Alleged 2020 Decision”), with its maker unknown on the face of the Form 86 (be it the Torture Claims Appeal Board/adjudicator of the Non-Refoulement Claims Petition Office (“the Board”) or the Director of Immigration (“the Director”)). As a matter of background, by previous decisions rendered by the Director and the Board (respectively dated 6 February 2012 and 13 March 2012), the applicant’s torture claim under art.3 of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (“the Torture Claim”) was dismissed and has been finally determined. By referring to the Alleged 2020 Decision in the Form 86, the applicant was clearly referring to a decision which was rendered after the decisions on the Torture Claim. As the Alleged 2020 Decision was not produced by the applicant with the Form 86 nor exhibited to his supporting affirmation, and thus was not made available for the Judge’s consideration, the Judge made the relevant enquiries with

the Board, but apparently to no avail. For the purpose of clarifying this issue, the Judge summoned the applicant before him at a hearing on 24 November 2025, at which the applicant confirmed that “he did not have a copy of [the Alleged 2020 Decision] and he had nothing to say” (Leave Decision, [1]). After considering the documents filed by the applicant as well as his oral submissions made at the hearing on 24 November 2025, the Judge struck out the application for the reasons stated at [1] of the Leave Decision. Appeal to this court By a Notice of Appeal dated 22 December 2025, the applicant stated that the Judge erred in striking out his case “against [the Director]” and that the Judge should have considered “the rejection of [the Director] because he was the primary decision maker in this matter”. The applicant further complained that the Judge failed to consider the reasons for his “inability to file the appeal with [the Board]” and to “assess the bases of the decision of [the Director]”. The applicant failed to lodge written submissions in support of the appeal. He is thus deemed to have abandoned his right to rely on written submissions. The applicant did not request an oral hearing and consented to the appeal being disposed of on paper by the court. We will accordingly deal with the appeal on paper on the basis of the materials already filed with the court. Discussion At the crux of the present appeal is the issue of whether the Alleged 2020 Decision in fact existed, and if so, who the decision maker was. Although it was incumbent upon the applicant (and he has failed) to produce a copy of the Alleged 2020 Decision for the Judge’s determination of his leave application, the issues of the existence of the Alleged 2020 Decision and the identity of the decision maker appear to have been left unresolved, as may be seen from the Leave Decision and the Corrigendum thereto. For the purpose of clarifying these issues, this court wrote to the Board and the Department of Justice (“the DOJ”; acting on behalf of the Director) on 5 February 2026 and to ascertain whether there had been any decision (in 2020 or otherwise) concerning the applicant. On 9 February 2026, the Board informed that it has not rendered any decision in respect of the applicant’s non-refoulement claim which post-dated the determination of the Torture Claim. On 20 February 2026, the DOJ (for the Director) confirmed that the Director had not rendered the Alleged 2020 Decision, and that in respect of decisions dealing with the applicant’s non-refoulement claim which post-dated the Torture Claim, the Director had only made a decision on 9 September 2016 refusing the applicant’s request to make a subsequent claim (“the 2016 Decision”). In the circumstances, the Alleged 2020 Decision does not exist and it was plainly within the Judge’s purview and discretion to strike out the applicant’s application under the Form 86. Moreover, notwithstanding the Director’s rendering of the 2016 Decision after the determination of the applicant’s Torture Claim, the 2016 Decision was clearly not the one allegedly made on 14 October 2020 (i.e. the date of the Alleged 2020 Decision as stated by the applicant in the Form 86) and it was not, in any event, the subject of the Judge’s determination at the hearing below. We therefore do not see any basis to disturb the Judge’s decision to strike out the application under the Form 86. The applicant has therefore failed to identify any error on the part of the Judge and thus failed to raise any viable ground of appeal. There is therefore no merit in the appeal and we dismiss the appeal accordingly. (Aarif Barma) (Thomas Au) Justice of Appeal Justice of Appeal The applicant acting in person

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