

HONG KONG / JUDGMENT

RE MALLA SURAJ

[2025] HKCA 1067

COURT

Court of Appeal

DECIDED

5 December 2025

CASE / FILE NUMBER

CACV222/2024

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CACV 222/2024, [2025] HKCA 1067 On Appeal From [2025] HKCA 442 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO 222 OF 2024 (ON APPEAL FROM HCAL NO 1591 OF 2019)

RE: MALLA SURAJ Applicant

Before: Hon Barma and Au JJA in Court Date of Judgment: 5 December 2025

J U D G M E N T

Hon Au JA (giving the Judgment of the Court): On 23 May 2025, the applicant filed a Notice of Motion to apply for leave to appeal to the Court of Final Appeal against this court’s judgment of 16 May 2025 (“the Judgment”) ([2025] HKCA 442). In the Judgment, we dismissed the applicant’s appeal against the decision of Deputy High Court Judge Judge To (“the Judge”) dated 30 May 2024, by which the Judge dismissed his application for leave to apply for judicial review ([2024] HKCFI 1476). The facts and issues in the appeal, as well as this court’s reasons for dismissing it, are set out in the Judgment. We will not repeat them here. After reviewing the Notice of Motion, we see no reason to deviate from the usual practice to consider this application on paper pursuant to paragraph 3 of Practice Direction 2.1. Section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance, Cap 484 (“the HKCFAO”) provides that an appeal shall lie to the Court of Final Appeal at the discretion of this court or the Court of Final Appeal if the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court of Final Appeal for decision. In his Notice of Motion, the applicant asserted that the Court had failed to appreciate the significance of his non-refoulement claim and that the Court had not addressed his grounds or submissions “seeking leave to appeal”.

He also asserted that he did not receive any notice of hearing or directions for a skeleton argument. He further complained that his grounds of appeal should not be dismissed outright given that his failure to raise these grounds could be due to his lack of legal knowledge or assistance. The applicant lodged his written submissions on 5 June 2025. In those submissions, he claimed that the Judgment was unreasonable and procedurally unfair and that he required language and legal assistance. He further asserted that the Board's Decision and the Leave Decision were never translated or read back to him. The applicant's application is devoid of merit. The applicant's assertions are all vague, bare and unsupported by any specific particular or evidence. General assertions of his fear if refoiled do not constitute proper grounds of appeal: *Re Saldua Dorothy Trifalgar* [2022] HKCA 627 at [6]. As seen from [10] [17] of the Judgment, his arguments in support of his appeal been fully considered and rejected by this court. In particular, his allegations concerning the lack of language and legal assistance had all been considered and rejected in entirety by this court: [15] of the Judgment. The applicant merely disagreed with the Judgment but failed to specify any error in the Judgment. It is well established that the Court of Appeal will not allow an application of this nature to be deployed as an occasion for re-running the arguments which had already been canvassed at the appeal: *Ho Sin Ying v Chan Yui Ling & Another* (unreported, CACV 221/2013, 14 November 2014) at [2] and [3]. In our view, his assertions are not proper grounds of appeal. Moreover, as noted in [11] of the Judgment, the Notice of Hearing was sent to the applicant's last known address on 5 August 2024, specifically requiring the applicant to lodge his skeleton argument on or before 28 August 2024, failing which he would be deemed to have waived his right to have an oral hearing and the hearing date would be vacated with the appeal being determined on paper. By a letter from the Court dated 29 August 2024 sent to the applicant's last known address on the same day ("the Letter"), the applicant was also informed that given his failure to lodge skeleton submissions, his appeal would thus be determined on paper. Both the Notice of Hearing and the Letter were not returned undelivered from the Post Office. The applicant failed to give any evidence in support of his bare allegation that he failed to receive the Notice of Hearing or directions for a skeleton argument. His assertions plainly fail. Further and in any event, even taking his case at its highest, his allegations remain fact-specific and do not relate to any question of great general or public importance. Accordingly, the applicant has failed to identify any question of great general or public importance, as required by section 22(1)(b) of the HKCFAO. We also do not see any basis for granting leave on the "or otherwise" limb under section 22(1)(b) of the HKCFAO. For these reasons, the applicant's intended appeal has no merit. Accordingly, the Notice of Motion filed on 23 May 2025 is hereby dismissed. (Aarif Barma) (Thomas Au) Justice of Appeal Justice of Appeal The applicant acting in person

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