

HONG KONG / JUDGMENT

RE SABIR MOHAMMAD SHAHBAZ

[2026] HKCA 704

COURT

Court of Appeal

DECIDED

20 April 2026

CASE / FILE NUMBER

CAMP30/2025

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CAMP 30/2025, [2026] HKCA 704

On appeal from [2024] HKCFI 1112

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO 30 OF 2025

(ON AN INTENDED APPEAL FROM HCAL 1447/2019)

RE:

SABIR MOHAMMAD SHAHBAZ

Applicant

Before: Hon Kwan VP and Barma JA in Court

Date of Judgment: 20 April 2026

J U D G M E N T

Hon Barma JA (giving the Judgment of the Court):

This is an application for extension of time to appeal against the decision of DHCJ KW Lung (“the Judge”) dated 13 February 2025 (“the EoT Decision”) refusing to extend time for the applicant to appeal against his decision dated 7 May 2024 (“the Leave Decision”) refusing to grant leave to 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 20 May 2019 (“the Board’s Decision”) dismissing the appeal against the decision of the Director of Immigration dated 29 December 2017 rejecting the applicant’s non-refoulement claim.

The applicant’s background, the basis of his claim and the Board’s reasons in reaching the Board’s Decision have been set out by the Judge in the Leave Decision at [4]-[10] and [14]-[17], which will not be repeated.

The applicant did not request for an oral hearing for the leave application. After considering the documents filed by the applicant, the Judge dismissed the application for the reasons stated at [20]-[25] of the Leave Decision.

The present application for extension of time to appeal

According to the court’s record, a copy of the Leave Decision and a sealed copy of the Judge’s order was sent by post to the applicant at his last known address on 7 May 2024, which was not returned undelivered.

Pursuant to Order 53 rule 3(4), the applicant had 14 days to lodge an appeal. The applicant did not file a Notice of Appeal within 14 days from the date of the Leave Decision.

Subsequently, the applicant made an application in the court below for an extension of time to appeal against the Leave Decision, which was dismissed by the Judge for the reasons stated in the EoT Decision.

By a Summons filed on 17 February 2025, the applicant renewed his application for an extension of time to appeal before this court. Although in the Summons the applicant purported to seek leave to appeal against the EoT Decision, we shall treat it as a renewed application for an extension of time to appeal against the substantive Leave Decision, by which leave to apply for judicial review was refused.

In the Summons and his supporting affirmation, the applicant contended that he was unrepresented and did not have access to any legal advice. He claimed, without providing particulars, that there was “a good ground of appeal that was not necessarily considered at the stage of applying for leave for judicial review”. Finally, the applicant attached a news article for this court’s consideration, which in gist shows that there had been violence and events of religious unrest in the Mominpore locality of Kolkata in West Bengal, India, in around October 2022.

In his written submissions lodged on 3 March 2025, the applicant referred, inter alia, to the well-established principles in *ST v Director of Immigration (sic)* [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.

Having considered the papers, we are satisfied that this application can properly be dealt with on the papers without the need for an oral hearing. We have, therefore, determined the applicant's application on the basis of the documents filed.

Discussion

The Leave Decision was sent to the last known address of the applicant, but was not returned undelivered. The inference to be drawn is that the applicant has had notice and knowledge of the Judge's order and the contents of the Leave Decision in the period within which he was permitted to lodge an appeal. In any event, it was incumbent upon the applicant to notify the court of a change of address, if any, as soon as possible. The consequences of failure to do so must lie with him.

We are therefore of the view that the applicant has proffered no reasonable reason or explanation for the delay in bringing the intended appeal, nor has he explained how and when he had come to learn of the contents of the Leave Decision.

We have nonetheless proceeded to consider the merits of the intended appeal.

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.

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. In any event, general assertions of fear if refouled do not constitute proper grounds of appeal: *Re Saldua Dorothy Trifalgar* [2022] HKCA 627 at [6].

In the present case, the Board found the applicant to be an incredible witness by reason that there were material inconsistencies and/or omissions in his evidence. The applicant was also found to have fabricated claims on which his fear of harm was based, such as an alleged attack on his brother by his purported enemies (see Board's Decision at [58]). These were factual findings open to the Board on the evidence, and were sufficiently canvassed and considered by the Judge in the Leave Decision at [14]-[25]. We see no basis to interfere.

Accordingly, the applicant has 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.

We are also unpersuaded by the applicant's complaint of prejudice caused by his lack of legal representation. As this court has repeatedly held, it does not follow that the high standards of fairness applicable require that a non-refoulement protection claimant be absolutely entitled to legal representation at all stages of the screening process or the legal proceedings ensuing therefrom. See *Re Zunariyah* [2018] HKCA 14, *Re Zahid Abbas* [2018] HKCA 15, *Re Tariq Farhan* [2018] HKCA 17, *Re Lopchan Subash* [2018] HKCA 37 and *Re Ahmed Syed Rafiq* [2018] HKCA 178.

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 in the consideration of his leave application by the Judge and in the processing of his non-refoulement claim.

For these reasons, we do not see any prospect of success in the intended appeal. This court will not grant an extension of time for a hopeless appeal. The Summons filed on 17 February 2025 is accordingly dismissed.

(Susan Kwan)

(Aarif Barma)

Vice-President

Justice of Appeal

The applicant acting in person

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