

HONG KONG / JUDGMENT

S v. L

COURT

Court of Appeal

DECIDED

20 November 2007

CASE / FILE NUMBER

CACV205/2007

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bjbj cacv 205/2007 in the high court of the hong kong special administrative region court of appeal civil appeal no. 205 of 2007 (on appeal from HCMC NO. 2 of 2006) BETWEEN S Petitioner Respondent Before: Hon Rogers VP and Le Pichon JA in Court Date of Hearing: 20 November 2007 Date of Judgment: 20 November 2007 J U D G M E N T Hon Rogers VP: This is an application for leave to appeal to the Court of Final Appeal under the provisions of section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484 from a judgment of this Court given on 3 October, with reasons handed down on 12 October 2007. By that order, this Court ordered that the judgment of the judge below be set aside and that the judge not adjudicate upon any further aspects of these proceedings, HCMC No. 2 of 2006. This Court made the further consequential order that all further proceedings and/or hearings in these proceedings be listed to be heard before some other judge of the High Court. The facts and the background to this matter can be gleaned from the reasons for judgment handed down on 12 October 2007. This application is put on the basis that the issues involved are matters of great general or public importance or otherwise ought to be submitted to the Court of Final Appeal for decision. This morning, counsel Miss Ismail, put before this court a draft amended notice of motion. The question in this draft, as it now reads, is: Whether the Court of Appeal correctly applied the test for apparent bias in all the circumstances, where a judge of the High Court has issued a judgment from which it is contended that an informed and fair-minded observer would consider there to be a real possibility that the judge was biased against the Chinese race. I would say at once that matters relating to the due administration of justice and the fairness of the procedures are certainly matters of great general or public importance. It is often said that it is as important that justice should be seen to be done as it is that justice should be done. Indeed, that cannot be said to have been overlooked on the appeal to this Court. In the written submissions, Mr Scott SC, who appeared on behalf of the Petitioner, the respondent to this application, queried the rationale for making this application. As was pointed out, there has never been any dispute between the parties as to the test which has to be applied. Indeed, the question which is now framed makes that clear. The question is whether a fair-minded and informed observer would conclude that there is a real possibility of bias. Because there was no issue raised as to that, it was difficult to discern any rational reason for seeking leave to appeal. The reason for bringing this application could not be ascribed to the fact that the disputes between the parties had reached a level that the

Applicant in this application, the respondent to the appeal, would wish to challenge every order obtained by the Petitioner. Nor could it be ascribed to the notion that this Court reached a conclusion that a fair-minded and informed observer would not have reached. Quite apart from that, since the basis upon which this Court proceeded is not challenged, any question raised on an appeal would be specific as to the facts of this case and hence not fall within the terms of the section. For my part, I would not grant leave to appeal. Hon Le Pichon JA: I agree. (Anthony Rogers) Vice-President (Doreen Le Pichon) Justice of Appeal Mr John Scott SC and Ms Frances Irving, instructed by Messrs Hampton Winter & Glynn, for the Petitioner/Respondent Ms Roxanne Ismail, instructed by Messrs Clifford Chance, for the Respondent/Applicant PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk 7b-"3 H; < jFen & 6" ABC-Final (fair)1.dot setup Microsoft Word 9.0 Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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