

HONG KONG / JUDGMENT

TKW v. CYKJ**[2025] HKFC 93****COURT**

Family Court

DECIDED

23 May 2025

CASE / FILE NUMBER

FCMP69/2023

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FCMP 69/2023

**[2025] HKFC 93 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 69 OF 2023**

BETWEEN TKW Applicant and CYKJ Respondent

Coram: His Honour Judge G. Own in Chambers (By Paper Disposal) Date of Decision : 23 May
2025

D E C I S I O N (Leave to Appeal)

Background

1. The Applicant and the Respondent are respectively the father and mother of 2 children of the family born out of their marriage. Parties married in December 2007. The elder child, a daughter, was born in 2008. The younger child, a son, was born in 2012. Both children are holding Australian citizenship by descent. The Respondent is also a citizen of Australia. Chronology 2. On 12 May 2023, the Applicant acting in person commenced these proceedings seeking reliefs under the Guardianship of Minors Ordinance, Cap.13 against the Respondent, inter alia, for :- Joint custody of the 2 children; Return of the 2 children to the jurisdiction of Hong Kong; Restraining the Respondent from leaving Hong Kong unless the 2 children are returned to Hong Kong; Restraining the Respondent from removing the 2 children out of Hong Kong 3. The Respondent instructed lawyers to represent her as she and the 2 children had already left Hong Kong for Australia on 6 April 2023. 4. On 12 May 2023

(Australian time), which was the day when these proceedings were commenced in Hong Kong, the Respondent started proceedings in the Federal Circuit Court of Australia, in Brisbane, under file number BRC5963/2023 seeking parenting orders and other reliefs. 5. At the hearing on 5 March 2024, upon hearing submissions from the parties on the latest position of the proceedings in Australia, I ordered that these proceedings be stayed pending the determination of the Hague Proceedings in Australia (File No.11845/2023) with liberty to restore. 6. At a directions hearing on 30 September 2024, the Applicant was ordered to file a Summons and an affirmation in support of his application to restore these proceedings within the next 7 days. 7. On 2 October 2024, the Applicant issued the Summons (“Restore Summons”) which read :- “1. To restore these proceedings;

2. Costs be served.” 8. The Restore Summons was scheduled for hearing on 18 November 2024. 9. On 14 November 2024, the Applicant issued a further Summons (“November Summons”) which read :- “1. The Respondent do immediately return the child of specified minors to Hong Kong :- Txxxxx [son]
2. Joint Custody for the specified minors to the Father and the Mother :-
 - (1) Txxxxx [daughter]
 - (2) Txxxxx [son];
3. Cost be reserved.” 10. The November Summons was scheduled for hearing on 16 December 2024. For reasons unknown, the Applicant put down in the margin of the November Summons “Order 14 r1 of RDC”. 11. On 15 November 2024, this Court received a Memorandum (dated 13 November 2024) that the Respondent had made application for legal aid. 12. Accordingly, these proceedings were stayed for 42 days under Section 15 of the Legal Aid Ordinance, Cap.91 and Regulation 7A thereunder. Thus, the hearings for the Restore Summons and the November Summons were both vacated and re-fixed to 18 March 2025 to cater for the 42-day stay period. 13. On 27 December 2024, the Applicant issued a further Summons (“December Summons”) which read :- “1. The proceedings be restored.
2. The hearing listed on 18 March 2025 be moved forward to the earliest date or same date of hearing of this Summons.
3. The Mother provides the Father with the son’s WhatsApp Messenger number for their communication at their free will.
4. The Father has access to the children with fixed time as below forthwith :- video conference with the Son fixed at 6:30 – 7:30 p.m. (Brisbane time) everyday. video conference with the Daughter fixed at 7:30 p.m. – 8:30 p.m. (Brisbane time) everyday.
5. No order as to costs.” 14. The December Summons was scheduled for hearing on 20 January 2025. 15. On 20 January 2025, I made the following orders (“January Order”) in respect of the December Summons as follows :- “1. Paragraph 1 and 2 of the said Summons be dismissed;

2. Paragraph 3 and 4 of the said Summons be adjourned and to be dealt with on 18th March 2025 at 10:30 a.m.;
3. Leave granted to the Respondent to file and serve Affirmation in Opposition to the 6th Affirmation of the Applicant on or before 10th February 2025;
4. Leave granted to the Applicant to file and serve Affirmation in reply (if any) on or before 24th February 2025;
5. No further affirmation be filed by either party without leave of the Court.
6. Both parties attend personally at the next hearing.
7. No Order as to costs.” 16. On 28 January 2025, the Applicant issued a Summons seeking leave to appeal the January Order. In the draft grounds of appeal, only 1 ground of appeal stated therein which said :- “The Family Court Judge failed to appreciate the urgency of the matter for the best interest of the children, particularly in an international parental child abduction case.” 17. In his 5-page Written Statement, the Applicant referred to the chain of events that had happened and his personal knowledge of the condition of the children in Brisbane, Australia. 18. There was no affirmation filed by the Respondent in opposition to the Applicant’s leave to appeal application. The relevant provisions on granting leave to appeal 19. The jurisdiction to grant leave to appeal rests with section 63A of the District Court Ordinance, Cap.336 which provides that leave to appeal shall not be granted unless the court is satisfied that the appeal has a reasonable prospect of success or there are some other reasons in the interests of justice that the appeal should be heard. 20. The relevant test for determining whether the appeal has a reasonable prospect of success is whether the applicant for leave can show that he has an arguable case with reasonable chances of success on appeal. A reasonable prospect of success means an appeal with prospects that are more than “fanciful” but which do not need to be shown to be “probable” (see KNM v. HTF, HCMP No.288/2011 per Fok JA (as he then was) at paragraphs 8 and 9 of the Judgment). Discussion 21. First and foremost, the January Order in any view is a case management decision made at the interlocutory stage of these proceedings. 22. It is trite that the appellant seeking leave to appeal a case management decision faces a very high hurdle and has to show that the Judge had gone clearly wrong and made orders which clearly involved an injustice or an inability for the trial court to carry out its task or had erred in principle or that his order was irrational (see Wong Kar Gee Mimi v Severn Villa Ltd [2012] 1 HKLRD 887 applied Lee Tak Yee v Chen Park Kuen [2001] HKLRD 401 and Kan Miu Wah v Aeroflot Russian International Airlines (unrep, CACV 142/2006, [2006] HKEC 1658)). (Hong Kong Civil Procedure 2025, Volume 1, paragraph 59/2A/4). 23. Further, under paragraph 38 of Section J of Practice Direction 5.2 where it was said :- “38. The parties should note that case management decisions are matters within the discretion or the judge making that decision and are generally not susceptible to appeals.” 24. On the present application for leave to appeal, the Applicant failed to say which part of the January Order was he seeking leave to appeal. There are altogether 5 paragraphs in my January Order including directions for

filing of affirmation evidence to cater for other pending matters not within the December Summons (paragraphs 3 and 4 of the January Order). 25. Presumably the Applicant is seeking leave to appeal paragraphs 1 and 2 of my January Order as to dismissal of his December Summons (repeatedly seeking restoration (my emphasis) as he had already done so in his November Summons) and my refusal to bring forward the hearing scheduled for 18 March 2025 to the earliest date or the same date of the Summons which he had asked for. 26. At the hearing, the Applicant had been reminded his application for restoration would be heard on 18 March 2025 and that date was already the earliest date available given that this date was fixed back in November 2024. 27. As for paragraphs 3 and 4 of the “December Summons”, both related to access arrangements with the 2 children which clearly intertwined with paragraph 2 of the Applicant’s November Summons already scheduled to be heard on 18 March 2025. Accordingly, paragraph 2 of the January Order was granted. 28. For all these reasons, and the fact that the January Order is a case management decision, I decided that there is no reasonable prospect of success for the Applicant in his intended appeal. 29. Leave to appeal is not granted. Any other grounds in the interests of justice ? 30. Given further consideration to the Applicant’s case, I also decided that there was no other grounds for me to grant leave to appeal in the interests of justice. 31. In arriving at this conclusion, I have borne in mind that in family cases, children’s matter always deserve priority over other disputes or matter. However, it is also the duty of the Court to ensure that its valuable resources are fairly and evenly distributed amongst all other court users. 32. On the background and development of this case, the Applicant ought to seek proper legal assistance and advice for pursuing remedies and reliefs (if so advised) on a time efficient and effective manner. There is no room for the Applicant to “try to expedite” legal process by issuing multiple summonses for similar reliefs within couple of months and ended up with undue procrastination of these proceedings at the expense of public resources.

Orders

33. I now grant the following Orders :- Applicant’s Summons dated 28 January 2025 seeking leave to appeal be dismissed; and There be no Order as to costs. 34. This is a costs order nisi which would become absolute if no application to vary the same was made within 14 days from the date of this Decision. (George Own) District Judge The Applicant (Appellant) unrepresented, acting in person

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