



IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

28 August 2024

CASE No: AIFC-C/CFI/2024/0018

MICHAEL WILSON & PARTNERS, LIMITED

Applicant

v

(1) CJSC KAZSUBTON
(2) KAZPHOSPHATE LLP
(3) KAZPHOSPHATE LIMITED

Respondents

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

1. **The application for an oral renewal of the application for permission to appeal and ancillary relief is refused.**
2. **Costs reserved.**

JUDGMENT

1. By proceedings in Case No. AIFC-C/CFI/2023/0002 the present Applicant, Michael Wilson & Partners, Limited, sought orders from the AIFC Court recognising and enforcing judgments given by the English High Court against the First and Second Respondents and/or judgments given by a Netherlands Court recognising and granting permission to enforce those English judgments. For reasons given in a judgment dated 26 September 2023 the AIFC Court of First Instance (“the CFI”) declared that the Court had no jurisdiction to entertain those proceedings and ordered that the Claim Form be set aside and the proceedings be dismissed as against all three Respondents. By a separate judgment, dated 31 October 2023, the CFI made a consequential order for costs in favour of the Second and Third Respondents. Both judgments were given by the then Chief Justice of the Court, The Rt Hon The Lord Mance, following an *inter partes* procedure.
2. The Applicant applied to the AIFC Court of Appeal (“the CA”) for permission to appeal against those decisions, together with ancillary relief. By a judgment and order dated 31 January 2024 in Case No. AIFC-C/CA/2023/0040, the CA refused the application. The application was determined on paper in accordance with the normal rule under Rule 29.16 of the AIFC Court Rules. The Court did not direct an oral hearing pursuant to the exception in Rule 29.17 because, as stated in §3 of its judgment, it was satisfied that the application could be fairly determined on paper without an oral hearing, so that an oral hearing was not required by the rule; and, as was implicit, it decided against directing an oral hearing in the exercise of its residual discretion under the rule.
3. By the present application the Applicant seeks an “oral renewal” of its application for permission to appeal and ancillary relief. The Second Respondent and the Third Respondent have filed written submissions in opposition to the application. In accordance with the Court’s directions, the Applicant has filed written submissions in response to the Second Respondent’s contentions on the issue addressed in this judgment.
4. The application for an oral renewal is misconceived. Contrary to the Applicant’s submissions, there is no right to an oral renewal or oral hearing of an application for permission to appeal following refusal of the application on paper. The relevant AIFC Court Rules are clear in their terms:

“29.16 An application for permission to appeal not made orally to the lower Court at the hearing will be determined on paper, except as provided for by Rule 29.17.

29.17 The judge considering the application on paper may direct that the application be determined at an oral hearing, and shall so direct if the judge is of the opinion that the application cannot be fairly determined on paper without an oral hearing” (emphasis added).

In the absence of a direction under Rule 29.17 by the judge considering the application on paper, there is no right to an oral hearing of the application. And where the application has been refused on paper, the Rules do not allow an oral renewal of it.

5. The Applicant seeks to pray in aid the Civil Procedure Rules for England and Wales, arguing that they make provision for an oral renewal of an application for permission to appeal following a refusal on paper. The point is a bad one. Rule 52.5(1)-(2) of the Civil Procedure Rules, together with paragraph 15(1) of Practice Direction 52C, contains provisions concerning the determination of applications for permission to appeal to the England and Wales *Court of Appeal* which are materially identical to Rules 29.16-29.17 of the AIFC Court Rules. There, too, the Rules do not allow an oral renewal of an application refused on paper. The position under the Civil Procedure Rules is different in respect of applications for permission to appeal to the *County Court* and *High Court*. In those cases, where permission is refused on paper, the person seeking permission may request the decision to be reconsidered at an oral hearing: see Rule 52.4(1)-(2), together with paragraph 7.2 of Practice Direction 52B. The Applicant's submissions rely on those provisions but they have no application to appeals to the England and Wales Court of Appeal, where the relevant position, giving no right of oral renewal of an application refused on paper, is as stated above and has been so since at least 2016. The AIFC Court Rules use the same language as adopted by the Civil Procedure Rules in relation to appeals to the England and Wales Court of Appeal and have the same effect. The absence of a right of oral renewal is plainly the result of a deliberate drafting decision and, contrary to the Applicant's submission, there is no lacuna in the Rules.
6. The Applicant also refers to Rule 23.8(3)-(4) of the Civil Procedure Rules, which provide for an oral hearing of an application in certain circumstances. Those provisions, however, are displaced by the specific, mandatory language of Rule 52.5 in relation to applications for permission to appeal to the Court of Appeal. Nor do the provisions have any direct equivalent in the AIFC Court Rules.
7. The application for a stay is intimately connected to the application for permission to appeal and can have no independent life once the application for permission to appeal has been refused.
8. The Applicant also refers to the jurisdiction recognised by the Court of Appeal in *Taylor v Lawrence* [2002] EWCA Civ 909 and now given effect in Rule 52.30 of the Civil Procedure Rules, to reopen a final determination of an appeal or of an application for permission to appeal in exceptional circumstances. The exercise of the jurisdiction in England and Wales is subject to stringent conditions, including that a final determination will not be reopened unless it is necessary to do so in order to avoid real injustice, the circumstances are exceptional and make it appropriate to reopen the matter, and there is no alternative effective remedy (Rule 52.30(1)). Moreover, permission is needed to make an application under the rule and there is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs (Rule 52.30(4)-(5)). Even if the AIFC Court were to recognise a similar jurisdiction (on which the AIFC Court Rules are silent) and were to lay down similar procedural requirements, the fact is that the application now before the Court is not a *Taylor v Lawrence* application; if it were, there would be no right to an oral hearing of it unless, exceptionally, the judge so directed; and the application would stand no realistic chance of being granted permission since the case gets nowhere near to meeting the substantive conditions for exercising the jurisdiction. That includes a contention that the Third Respondent and its lawyers misled the Court, in that new information shows that the Third Respondent has a BIN (Business Identification Number) in Kazakhstan and is therefore, as the submission

goes, subject to the jurisdiction of the AIFC. The relevance of the BIN is disputed by the Third Respondent but in any event the point does not undermine the CFI's reasoning as regards the erroneous joinder of the Third Respondent in the proceedings or as regards the core jurisdictional issue decided by the Court. In short, the Applicant's reliance on *Taylor v Lawrence* does not give any support to the Applicant's case that it is entitled to an oral renewal of its application for permission to appeal following refusal of permission on paper.

9. In the circumstances it is unnecessary and inappropriate to deal here with the issues that the Applicant states would be raised at an oral renewal hearing.
10. It is also unnecessary to say anything further about the points raised in the defence submissions of the Respondents, including an application by the Third Respondent under Rule 8.1 of the AIFC Court Rules for an order that the AIFC Court does not have jurisdiction over it – an application which concentrates mistakenly on the underlying jurisdictional issues between the parties rather than on the immediately relevant question of oral renewal of the application for permission to appeal.
11. Although the Applicant's present application has been given a separate case number administratively, and the case number contains a "CFI" designation rather than a "CA" designation, the application is in substance incidental to the application for permission to appeal that was the subject of the CA's decision in Case No. AIFC-C/CA/2023/0040. It is an application calling for decision by the CA, not by the CFI, and as an incident of that previous case. It has been treated accordingly in this judgment.
12. The application notice requests that the resolution of the present application be by oral hearing rather than on paper. The Court takes the view, however, that the application should be determined on paper without an oral hearing, and the Court has proceeded accordingly. By Rule 6.21 of the AIFC Court Rules the Court may deal with an application without a hearing if the Court does not consider that a hearing would be desirable. The Court does not consider that a hearing would be desirable in this case. A hearing is unnecessary, given the clear absence of a right of oral renewal of an application for permission to appeal following refusal of the application on paper. To hold a hearing of the application for oral renewal would also tend to go behind the Court's previous decision that the application for permission to appeal could be fairly determined without a hearing. Moreover, determining the present application on paper gives effect to the overriding objective in Rule 1.6 of the AIFC Court Rules, having regard in particular to Rule 1.6(3) ("ensuring that the case is dealt with expeditiously and effectively, using no more resources than are necessary") and Rule 1.6(4) (proportionality). Even in the absence of the express provision in Rule 6.21, the exercise of the Court's general powers of case management under Rule 3.1 would be relied upon to produce the same result.
13. For those reasons the Applicant's application for an oral renewal of the application for permission to appeal and ancillary relief is refused.
14. The submissions of the Second Respondent and the Third Respondent contain applications for costs. The Court's decision on costs is reserved. The Second Respondent and the Third Respondent may file information as to the amount of costs claimed within 14 days of the date of this decision. The Applicant may respond by way of written submissions on the principle and amount of costs within 14 days thereafter.



By the Court,

The Rt Hon. Sir Stephen Richards

Justice, AIFC Court

Representation:

The Appellant was represented by Mr. Michael Wilson, Partner, Michael Wilson & Partners, Limited.

The First Respondent was not represented.

The Second Respondent was represented by Mr. Bakhyt Tukulov, Partner, Tukulov Kassilgov Shaikenov Disputes LLP, Almaty, Republic of Kazakhstan.

The Third Respondent was represented by Ms. Dinara Nurgazy, Associate, Kinstellar LLP, Almaty, Republic of Kazakhstan.