



**COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE**

28 May 2025

CASE No: AIFC-C/CA/2025/0004

MICHAEL WILSON & PARTNERS, LIMITED

Appellant

v

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

Respondents

JUDGMENT

Justice of the Court:

Chief Justice The Rt Hon. The Lord Burnett of Maldon PC DL

JUDGMENT

1. This is an application for permission to appeal against the order of Justice Sir Stephen Richards made on 15 January 2025. It forms part of a protracted series of applications which have their roots in an unsuccessful attempt by Michael Wilson and Partners limited ("MWP"), a company registered in the British Virgin Islands, to enforce judgments of the English and Dutch courts against the defendants. On 26 September 2023 Lord Mance, Chief Justice, ruled that the AIFC Court did not have jurisdiction to enforce those judgments. On 31 October 2023 he made orders for costs against MWP in favour of the second and third defendants: [AIFC Court Case No. 2 of 2023: Michael Wilson & Partners Ltd v. \(1\) CJSC KAZSUBTON; \(2\) KAZPHOSPHATE LLP; \(3\) KAZPHOSPHATE Limited](#). Those costs orders were not satisfied and became the subject of enforcement action in Kazakhstan as did a separate cost order made by Sir Stephen.
2. Sir Stephen has dealt with multiple applications since. A comprehensive account of the history of the litigation may be found in his latest judgment in the matter dated 6 May 2025: [AIFC Court Case No. 2 of 2023, AIFC Court Case No. 40 of 2023, AIFC Court Case No. 18 of 2024: Michael Wilson & Partners, Limited v. \(1\) CJSC KAZSUBTON; \(2\) KAZPHOSPHATE LLP; \(3\) KAZPHOSPHATE Limited](#).
3. On 15 January 2025 Sir Stephen gave judgment and made orders on an application made by MWP for the withdrawal and re-issue of the Execution Orders to enforce the costs order against the Claimant and in favour of the Second Defendant and the Third Defendant. His order was served on MWP the following day. The amendments were required to remove errors concerning the company's address and registration details. The judge amended the orders, although not to the full extent sought by MWP, but did not withdraw and reissue them because partial enforcement had already occurred against the correct bank account: see [AIFC Court Case No. 2 of 2023: Michael Wilson & Partners Ltd v. \(1\) CJSC KAZSUBTON; \(2\) KAZPHOSPHATE LLP; \(3\) KAZPHOSPHATE Limited \(Order dated 15 January 2025\)](#).
4. By a Notice of Appeal received by the Court on 6 February 2025 MWP sought permission to appeal against the order of 15 January 2025. It contained no grounds of appeal nor was a skeleton argument attached. Instead, MWP relied upon Rule 29.25 of the AIFC Court Rules which provides:

"Where it is impracticable to comply with Rule 29.24 [i.e. set out of the grounds of appeal in the notice and provide a skeleton argument], a statement of grounds of appeal and skeleton argument shall be filed within 21 days of filing the appellant's notice."

5. The basis on which MWP suggested that it was "impracticable" to comply with Rule 29.24 and thus rely on Rule 29.25 was:

"Due to [the Second and Third Defendants] failing to promptly, properly and fully address and deal with the exercise by MWP of its rights on 09.12.24, to date to inspect the Court file and to be allowed to inspect all originals and to be provided with and receive copies of all 'documents and correspondence on which it was not copied, touching upon or concerning the Execution Orders, and which directly relate and are important to this Appeal, and to provide such documents and correspondence in a timely manner from 09.12.24 to date, in accordance with MWP's rights, Rule 29.25 of the AIFC Rules applies. ...

Accordingly, MWP is filing and serving this Claim Form/Appellant's Notice, with the statement of its grounds of appeal and the skeleton argument to follow within twenty-one (21) days of the compliance by [the Second and Third Defendants] and provision to MWP of all such documents

and correspondence and when MWP has been able to inspect all originals, as the same are directly relevant to this appeal, the grounds and skeleton required."

6. No grounds or skeleton argument followed as required by Rule 29.25.
7. On 14 March 2025 the Second Defendant provided a response to the Notice of Appeal contending that as no grounds had been advanced in support of the application for permission to appeal there was no basis for concluding that the proposed appeal would have a real prospect of success, nor was there some other compelling reason for the appeal to be heard. Those are the conditions for granting permission to appeal found in Rule 29.6. It submitted that permission to appeal should be refused. In the alternative, if the appeal proceeded, the second defendant sought security for its costs.
8. Two days earlier, on 12 March 2025, the Third Defendant had applied for security for costs of the appeal, together with an order that the appeal be stayed until security was provided and the outstanding costs paid. It also sought an order that in default of providing security and paying the outstanding costs within 14 days, the Court should dismiss the appeal without further notice and restrict MWP "from making any submissions until it complies with" the order. On 21 March 2025 the Third Defendant issued a further application, expressly without prejudice to its application for security for costs. By that application the Third Defendant sought an order (a) striking out 'the appeal' under Rule 29.41; (b) dismissing the appeal and certifying that MWP is "estopped from relitigating the subject-matter of the appeal"; and (c) for all costs in connection with responding to the application for permission to appeal and its two applications. The Third Defendant submitted that MWP is issuing multiple applications and was behaving as a classic vexatious litigant.

The Application for Permission to Appeal

9. The starting point in the Rules is that an appellant's notice must be filed in all cases other than when an application for permission to appeal is made orally to the first instance judge: Rule 29.23. The usual position is that the appellant's notice shall contain or be accompanied by grounds of appeal and a skeleton argument: Rule 29.24. However, there is an exception where that is impracticable: Rule 29.25. That rule provides that where it is impracticable to provide grounds of appeal and a skeleton argument with the appellant's notice they "shall be filed within 21 days of filing the appellant's notice". The rule is designed to give the person seeking to bring an appeal, but for practical reasons cannot comply with Rule 29.24, a period of grace to comply. What it does not do is enable a litigant to seek to impose a condition on his opponent (or the court) which has the effect of suspending the rule which requires the service of grounds and a skeleton argument. Moreover, it does not enable a litigant to pursue what amounts to satellite litigation for disclosure. The reliance of MWP on Rule 29.25 was entirely misconceived. It should not be forgotten that Sir Stephen's judgment and order of 15 January 2025 was on an application brought by MWP. MWP was partially successful in that application but did not get all that it wanted. If it considered that Sir Stephen was wrong, MWP was in a position to articulate grounds of appeal. It has failed to do. Requests made earlier for documents were irrelevant.
10. The appeal court is left with an application for permission to appeal with no substance whatsoever. If there were substance, no doubt it would have been revealed in the application. There is no basis for concluding that the proposed appeal would have a real prospect of success. Still less could there be any other compelling reason why the appeal should be heard. I refuse permission to appeal.

The Defendant's' Applications

11. I begin by summarising how the appellate process works. Permission to appeal is required all in cases except an appeal from a contempt order: Rule 29.5. The application can be made to the lower court but does not have to be: Rule 29.6. An appellant is defined as "a person who brings or seeks to bring an appeal": Rule 29.2(4). That definition is significant because it reflects the position that there is no appeal until permission is granted, even though the party seeking to appeal is called the appellant in the notice of appeal. Rule 29.33 makes provision for a respondent's notice ordinarily to be filed within 21 days of the respondent receiving notice that permission to appeal has been granted. Rule 29.13 enables a respondent to make submissions in opposition to an application for permission to appeal within 21 days of its service on him, but there is no requirement to do so.
12. Both defendants have applied for security for costs pursuant to Rule 15.33. The Rule is headed "Security for costs of an appeal". The rule extends to appeals the principles which govern applications for security of costs in first instance claims. They include the conditions set out in Rule 15.30.
13. The applications for security for costs are and were premature. Such security could not be ordered, if it were appropriate, until permission to appeal had been granted. That reality was recognised by the Second Defendant in seeking security as an alternative to its request that the appeal court refuse permission to appeal. The Third Defendant does not appear to have recognised that reality but, permission to appeal now being refused, the question of security for costs does not arise.
14. The Third Defendant asked that the "appeal" be struck out. Rule 29.41 allows the court to "strike out the whole or part of an appeal notice". The question of striking out the notice of appeal as an abuse of process also does not arise because permission to appeal has been refused, in agreement with the representations made by the Second Defendant, for the reasons I have given. There would be no additional advantage to considering this application, reframed as an application to strike out the appeal notice, and real disadvantage. It would be necessary to allow MWP an opportunity to make written submissions to meet the allegations of abuse which underpin the argument, which is to be contrasted with a mistaken and wrong attempt to use Rule 29.25. That would prolong this unhappy saga. That is something the defendants themselves wish to avoid.
15. The Third Defendant's application that the appeal be dismissed overlooks that there is no appeal until permission to appeal is granted with the consequence that there is no appeal to dismiss.
16. The Third Defendant sought an ancillary order to dismiss the appeal, namely that the appeal court certify that MWP is "estopped from relitigating the subject-matter of the appeal". It is a general rule of the common law that a party may not relitigate an issue that has already been decided against it involving the same parties. Those advising MWP will be well aware of the rule. Moreover, the common law recognises the right of a court to protect itself from vexatious proceedings: see *Ebert v. Birch* [1999] EWCA Civ 3043; [2000] Ch 484. In England and Wales that common law jurisdiction has been augmented by statute which enables the Attorney General to apply to the High Court for an order preventing a person from bringing civil and/or criminal proceedings or making applications in such proceedings on the grounds that the person concerned has behaved vexatiously. The Civil Procedure Rules in London now also contain express provision for making Civil Restraint Orders. These operate to require a person to seek express permission of the court to issue proceedings or applications within proceedings. The Third Defendant has not sought the equivalent of a Civil Restraint Order against MWP based on the appeal court exercising its common law powers. It is to be hoped that the time will not come when the AIFC Court is required to consider the nature and extent of its powers to restrain a litigant from making applications without the prior leave of the court, whether in existing proceedings or generally, on the grounds that he has behaved vexatiously. Save in exceptional circumstances it could do so only after the subject of the proposed order had been given an

opportunity to file evidence and make submissions. There being no application of this nature before me, I say no more about it.

17. Finally, the Third Defendant seeks an order for its costs in resisting the application for permission to appeal and also the various applications it made. The general rule is that respondents who choose to resist an application for permission to appeal by serving a short document, unless they have expressly been asked to assist the court, do not recover their costs of doing so. Most respondents who do so are content to absorb the costs on the basis that resisting the grant of permission might save trouble and costs later. The appeal court can be expected to consider the application for permission to appeal by reference to the judgment of the court of first instance and the underlying court documents. Representations from the respondent can be helpful, especially if the application for permission to appeal is thought to be incomplete or misleading. But the reality in this case was that, in the absence of any grounds of appeal credibly calling into question the underlying judgment and order, permission to appeal could not be granted. There is also no basis for ordering MWP to pay the Third Defendant's costs of preparing various applications which were, with the greatest respect, at least premature.

Conclusion

18. The formal order that I make is:

1. Permission to appeal is refused;
2. The various applications made by the Second and Third Defendants are dismissed.

By Order of the Court,



The Rt Hon. The Lord Burnett of Maldon PC DL,
Chief Justice, AIFC Court



Representation:

The Claimant was represented by Mr Michael Wilson, Partner, Michael Wilson & Partners, Ltd, Almaty, Kazakhstan.

The First Defendant was not represented.

The Second Defendant was represented by Mr Bakhyt Tukulov, Partner, Associate, TKS Disputes LLP, Almaty, Kazakhstan.

The Third Defendant was represented by Mr Farukh Iminov, Lawyer, Kinstellar LLP, Almaty, Republic of Kazakhstan.