**IN THE COURT OF FIRST INSTANCE**

**OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE**

**17 March 2026**

**CASE No: AIFC-C/CFI/2025/0035**

**MICHAEL WILSON & PARTNERS, LIMITED**

**Claimant**

**v.**

**(1) CJSC KAZSUBTON**

**(2) KAZPHOSPHATE LLP**

**(3) KAZPHOSPHATE LIMITED**

**Defendants**

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# JUDGMENT AND ORDER

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**Justice of the Court:**

**Justice Tom Montagu – Smith KC**

**JUDGMENT**

1. This is an application for permission to appeal against a costs order ("the Order") made against Mr Michael Wilson ("Mr Wilson") in favour of the Second Defendant. The Order was made by Justice Sir Stephen Richards ("the Judge") pursuant to the Court's powers under Rule 26.26 of the AIFC Court Rules ("the ACR"). The Judge set out his reasons for his decision in a judgment dated 6 May 2025. The terms of the Order itself were dated 13 June 2025. By the Order, Mr Wilson was made personally liable for costs which the Claimant had been ordered to pay the Second Defendant in the sums of USD 14,238.45 and KZT 1,000,000. In addition, Mr Wilson was ordered to pay the Second Defendant's costs of the application for the Order, assessed in the sum of KZT 3,500,298.90.

2. The Respondents have indicated that they oppose permission to appeal.

3. In these proceedings, the Claimant, Michael Wilson & Partners Limited, sought recognition and enforcement in the AIFC Courts of a number of judgments and orders of the English High Court and of a Dutch Court. The claim was unsuccessful. A number of applications and Orders followed. Materially, for the purposes of this judgment:

    a. On 31 October 2023, the Claimant was ordered to pay the Second Defendant's costs, assessed at USD 14,238.45.

    b. On 12 November 2024, the Court of Appeal ordered the Claimant to pay the Second Defendant KZT 1,000,000 in relation to an application for an oral renewal or oral hearing of an application for permission to appeal.

4. The Second Defendant has been only partially successful in making recovery pursuant to these Orders.

5. On 31 December 2024, the Second Defendant applied for an Order that Mr Wilson be made personally liable to pay the two costs orders referred to above ("the Application"). The Application was made pursuant to Rule 26.26, which permits the Court to order a non-party to pay costs. In the alternative, it was made pursuant to Rule 26.28, which permits the Court to make wasted costs orders against legal representatives of parties.

6. On 28 February 2025, the Judge issued an Order ("the February Order") in which he:

    a. Added Mr Wilson as a party to the proceedings for the purposes of costs only;

    b. Set down a timetable for filing evidence, authorities, bundles and skeleton arguments for the Application;

c. Listed the Application to be heard by video-link on 23 April 2025, with a time limit of 2 hours.

7. On 2 April 2025, the Claimant applied for a declaration that the Application was invalid and (in effect) a nullity ("the Cross-Application"). On 3 April 2025, the Registry directed that any further documents in response to the Cross-Application should be filed by 17 April 2025.

8. In respect of the Application, the Second Defendant relied on witness statements from the head of its legal department and from a partner in the law firm representing it in the AIFC Court.

9. The Claimant filed evidence from Mr Wilson himself. Also filed was a further version of the hearing bundle, together with a document entitled "MWP's outline submissions in relation to KPLLP's purported application of 31.12.24."

10. On 17 April 2025, the Second Defendant filed a short response to the Cross-Application. On the same day, the Claimant filed a substantial further statement from Mr Aubakirov, who was described as a senior lawyer of the Claimant. The Second Defendant objected on the basis that the evidence was not permitted under the Orders made thus far. The Judge refused to allow its introduction at the start of the hearing on 23 April 2025 on the basis that it was out of time, that where the statement advanced argument, it could be dealt with in submissions, that much appeared irrelevant and duplicative, and that the Second Defendant would need time to respond if it was admitted.

11. A further version of the Claimant's outline submissions was filed on the morning of the hearing, together with some additional documents. The Judge decided that he would effectively disregard the further material.

12. At the hearing, the Judge permitted limited cross-examination of Mr Wilson pursuant to an application which had been made previously. He did not permit the cross-examination of the Second Defendant's witnesses. No application had been made in advance.

13. In his Judgment, the Judge granted the Application. I summarise his reasons for doing so briefly.

14. First, the Judge rejected the Cross-Application:

a. The Judge dismissed the argument that the Application was defective because the Court Rules required the use of standard forms. That position relied on an excessively formalistic approach to the Rules.

b. The Judge found that the Application had been validly served. The Application was emailed to Mr Wilson at his MWP email address. As such, it was clearly brought to the attention of Mr Wilson and the Claimant;

c. The February Order was therefore effective to join the Appellant as a party to the CFI proceedings and to the CA proceedings for the purposes of costs.

d. On one view, Mr Wilson had himself filed no evidence or other response to the Application. However, the Judge was prepared to treat the material filed by the Claimant as material on which Mr Wilson was entitled to rely in respect of the Application.

e. If, contrary to his view, there was some technical defect in the Application, the Judge would have exercised his powers to remedy that defect in accordance with Rules 1.8 and 3.4 and the Overriding Objective. In essence, no prejudice had been suffered by Mr Wilson and it would have been a waste of time and resources to require the Application start again.

15. Second, the Judge rejected the argument that the Second Defendant owed the Claimant money pursuant to English and Dutch Court orders which had been or which should be set off against the Claimant's liability for costs:

a. The Claimant's claim for recognition and enforcement of the English and Dutch Orders had been refused;

b. The costs orders in the AIFC Court took into account both the failure of the claim and the appeal. They also took into account the conduct of the case. As such, the competing costs liabilities were not so closely connected as to make it manifestly unjust to allow the Second Defendant to enforce the costs orders of the AIFC Court without taking into account the costs orders relied on by the Claimant.

16. Third, the Judge allowed the application pursuant to Rule 26.26:

a. The Judge referred to English authority on the equivalent provisions of the English Civil Procedure Rules. The central question for the Court was whether it would be just to make the order sought.

b. The Judge noted that the evidence on the issue of the nature of Mr Wilson's role and interest in the Claimant was unsatisfactory. It was not possible to draw any firm conclusions on those matters. Nor was it open to the Court to conclude that Mr Wilson stood to benefit personally from the litigation, nor that he had funded it.

c. However, the Judge found it fair to infer that Mr Wilson had effective control over the Claimant's litigation in the AIFC Court and was personally responsible for the decisions and actions which had caused the Second Defendant to face the litigation and incur the associated costs, including those which it had been unable to recover from the Claimant.

d. In particular, the Judge considered that the history of the litigation indicated that it involved a "personal mission, lacking in balance and going well beyond the bounds reasonably to be expected of a person fulfilling the ordinary role and responsibilities of a legal representative". The matters which informed this decision included reference to a number of untenable positions, misconceived applications, unnecessary complication and attendant expense and over 90 emails sent by Mr Wilson to the Court Registry, in respect of which the Judge found that Mr Wilson "runs the show" and for which he bore personal responsibility.

e. In the circumstances, the Judge considered it just to make the Order sought.

17. Fourth, the Judge went on to find that he would not have ordered wasted costs pursuant to Rule 26.28. In short, the Judge found that the costs had already been the subject of orders and it would be too late to reopen the decisions. Despite that, the Judge expressed "considerable sympathy" with the Second Defendant's complaints about the conduct of the litigation.

18. After the Judgment, the Claimant submitted a document entitled "Table of Errata". This included a number of points of substance which were, in effect, being reargued. The Claimant also applied to "recall and re-open" the hearing of 23 April 2025 and "rescind, set aside and vary" the Judgment. The Judge rejected the application on the basis that the appropriate course would be to appeal.

19. The Judge further ordered the Appellant to pay the costs of the Application and Cross-Application, assessed in the sum of KZT 3,500,298.90. Permission to appeal was refused, even though no application for permission to appeal had properly been made.

20. On 27 August 2025, the Claimant and Mr Wilson sought permission to appeal. The application was accompanied by a document entitled "Outline Grounds of Appeal in Support of MWP's Claim Form/Application of 04.07.25 Seeking to Rescind, Set Aside and/or Vary the Judgments". The application was accompanied by submissions seeking a stay of execution.

21. I remind myself that the test for granting permission to appeal is set out in AIFC Court Rules, r.29.6 as follows:

> "Permission to appeal may be given where the lower Court or the appeal Court considers that:

(1) the appeal would have a real prospect of success; or

(2) there is some other compelling reason why the appeal should be heard."

22. The Claimant does not expressly address this test. It asserts that the issues raised are important. However, it is not expressly suggested that there is a compelling reason to hear the appeal, other than on the basis that it has real prospects of success. I am not aware of any such other reason. I therefore turn to consider whether the appeal has real prospects of success.

23. There is a threshold issue which arises. The appeal purports to be made by the Claimant, not by Mr Wilson. In my view, the Claimant has no standing to appeal against the Judgment and Order which are made against Mr Wilson and not against the Claimant. In some cases, this might appear rather technical. However, the entire issue at stake is whether Mr Wilson should be liable for the costs of various actions taken by the Claimant in the AIFC Court. It may subsequently be argued that Mr Wilson should not be liable for the costs of this exercise, because the Claimant made the application for permission to appeal. This approach could well therefore be an attempt to ensure that Mr Wilson faces no further adverse costs orders. In any event, Mr Wilson has not sought to appeal the Order or the Judgment. In my view, this is fatal by itself.

24. Despite that threshold point, I go on to consider the 9 grounds of appeal which are raised.

25. Ground 1 asserts "Breaches of the Overriding Objective". In support of this, it is said that Mr Wilson "was only ever acting as a solicitor and corporate legal representative for and on behalf of MWP, and is not a shareholder, officer or director of MWP". The Ground goes on to assert that "the record shows and proves" that the Court breached Rules 1.6(1), 1.6(2), 1.6(4)(c) and 1.6(4)(d).

26. This ground of appeal raises no reasonably arguable basis on which to conclude that the Judge's decisions were wrong.

27. The Judge expressly said that he could not reach any conclusions about the nature of relationship between Mr Wilson and the Claimant. His decision was based on other factors, as set out above.

28. The allegations that the Court breached the overriding objective are unparticularised. It is manifestly insufficient to rely on "the record" as evidencing a breach of the Rules capable of rendering a decision unsafe.

29. Ground 2 asserts a failure to deal with the table of errata and reopening the application.

30. It is not open to a party to ask the first instance judge to re-write a judgment after it has been issued. The Court may ask for "errata" (in this case it did not) to correct typographical or calculation errors, for example. However, even where it does, that is not an opportunity to re-argue the matter. Still less is it an opportunity to raise new points, which were not raised below.

Once a decision is rendered, it can only be challenged on appeal, with certain specific exceptions, where provision is made in the rules (for example, setting aside a judgment in default). There was no error in the Judge refusing to entertain submissions of the sort identified by the Judge in the Order, paragraphs 2 and 3.

31. Ground 3 asserts a violation of the human right of Mr Wilson.

32. First, it is said there was never any proper basis to seek to join Mr Wilson personally. Second, it is said that the Judge failed to consider whether Mr Wilson could meet any liability. Reference is made to various execution mechanisms which may be available to the Second Defendant to enforce the costs order, including travel bans. Such practices are said to breach human rights.

33. I do not consider that this ground of appeal has any real prospects of success.

34. First, the decision to join Mr Wilson to proceedings was made in February 2025. No appeal was sought against that Order. It is far too late to appeal it now.

35. Second, the ground wholly ignores the reasons which the Judge gave for making Mr Wilson personally liable for costs. No attempt whatsoever is made to challenge the test he applied, nor the way in which he approached it.

36. Third, it is unclear to me whether there was any evidence as to Mr Wilson's means or even whether it was argued that his means were relevant to the Court's decision in the Judgment and Order.

37. Fourth, I do not consider that Mr Wilson's means, even if they were relied on and evidenced, would substantially change the analysis.

38. Fifth, I do not accept that travel bans generally infringe on human rights. If, in any individual case, the imposition of a travel ban might do so, no doubt that will be a factor in the Court's decision. However, it will be a matter for the court considering whether to impose a travel ban. The point does not arise at this stage.

39. Ground 3 states that Mr Wilson was not told that the hearing on 23 April 2025 would be the final hearing. He believed, it is said, that it was a procedural hearing. 2 hours, it is said, was inadequate.

40. These submissions have no real prospect of success. The February Order made clear the timetable for the hearing of the Application. Paragraph 3 of the February Order set out a detailed timetable for the hearing of the Application, allocating 45 minutes to the Respondent in opening, 60 minutes to Mr Wilson in response and 15 minutes for reply or any questions from the Court. The Order was entirely clear that the Application was to be heard at the hearing in April.

41. The Registry's directions then listed the Cross-Application. The Judge recorded the substantial submissions advanced in opposition to the Application and in support of the Cross-Application. It is not said what "procedural issues" Mr Wilson thought the hearing was listed to address. There were none.

42. The submissions assert (at paragraph 33) that "the Court basically accepts that Mr Wilson did not file any submissions in his defence, but wrongly proceeded on the incorrect assumption that MWP's submissions were equal to Mr Wilson's submissions and accordingly proceeded to the substantive hearing".

43. This submission appears to assert that the Court should not treat the Claimant's submissions as Mr Wilson's submissions. If that is right, this appeal must fail as Mr Wilson has not appealed against the Judgment and Order.

44. In reality, as I have recorded, the Judge treated the submissions made by the Claimant on the substance of Application and Cross-Application as submissions made for Mr Wilson. It is simply not open to the Claimant to make submission about an Order made against Mr Wilson but at the same time to assert that submissions it makes cannot be treated as being made for Mr Wilson. That is self-defeating.

45. If the Judge had not taken the approach he did, he would have been bound to grant the Application on the basis that Mr Wilson had failed to comply with the February Order.

46. It is clear to me that Mr Wilson was given every opportunity to respond to the Application.

47. Ground 4 asserts that the Judge was not entitled to decide the issue of whether the English and Dutch Orders should be set off against the Claimant's cost liability.

48. This submission has no real prospect of success.

49. I have not been provided with any material on the basis of which to doubt that the issue of set off was in fact before the Court. From the terms of the Judgment, it appears clear that it was.

50. In any event, the set off argument was raised by (or on behalf of) Mr Wilson. It could not succeed by default. Whether a set off defence was raised and dismissed, or whether Mr Wilson did not argue that there was a set off, leads to the same conclusion. The existence of the English and Dutch Orders did not provide any defence to the Application. The Claimant's argument on this point is also therefore self-defeating.

51. Ground 5 asserts that the Court lacks jurisdiction. Various further factual and legal assertions are made:

    a. That Mr Wilson is not resident in Kazakhstan;
    b. That no application was made to join him personally;
    c. No permission was sought or obtained to serve him outside the jurisdiction;
    d. He was not served personally;
    e. He was not properly served at any time.

52. These submissions contain a number of misconceptions. There is no requirement for permission to serve proceedings outside the jurisdiction. That is a feature of the English procedural rules which does not appear in the AIFC Court Rules. Nor is there any requirement for personal service. Service must be by a method which brings the proceedings to the attention of the defendant / respondent. Nor is there any requirement that a respondent be resident in Kazakhstan.

53. The short answer to these points is that Mr Wilson was in fact joined to these proceedings in February 2025 by the February Order. It is far too late to challenge that Order and no challenge to it is in fact advanced, even by the Claimant.

54. Ground 5 includes two further assertions.

55. First, it is said that the costs application was an attempt to stifle the enforcement of foreign judgments and infringe the rights and liberty of Mr Wilson. I disagree. It is a legitimate means to make Mr Wilson personally liable for costs incurred in the specific circumstances of this claim. Third party costs orders are available in a number of different court systems around the world.

56. Second, it is said that the Court erred in "purporting to find" that Mr Wilson was the controller of the Claimant when there was no evidence of that. This mischaracterises the Judgment. The Judge found that it was fair to infer that Mr Wilson controlled these proceedings. That inference was plainly available to him on the facts. More than that, it was, in my view, right. The argument that Mr Wilson was not controlling the Claimant's pursuit of these proceedings is somewhat undermined by the fact that the Claimant is purporting to appeal an order against Mr Wilson. That application is plainly for the benefit of Mr Wilson alone.

57. Ground 6 asserts that the Judge failed to deal with "WCA Arguments". It is said the Court overlooked the Claimant's email of 7 February 2025 seeking directions. The email is not produced. However, this would be a complaint about the February Order. It is far too late to challenge that now.

58. It is further said that the findings in paragraphs 51 – 54 of the Judgment have no basis in the evidence. That is wholly insufficient to challenge the facts on the basis of which the Judge inferred

that Mr Wilson was in control of the litigation. Further, the paragraphs themselves refer to the evidence on which they are based.

59. Ground 7 asserts a failure to take into account the timing of a decision by the Kazakhstan Supreme Court by which USD 6,000 was recovered from the Claimant's bank accounts in partial execution of the costs orders against it. The decision is not provided. It is not therefore possible to assess whether this is accurate. However, it is irrelevant in any event. The Judge held in terms that any issues of double recovery could be resolved at the execution stage, as would be normal. Making Mr Wilson liable for the costs does not mean that he has to pay twice. If the Second Defendant succeeds (or has succeeded) in enforcing in part against the Claimant then it will not be entitled to enforce against Mr Wilson in respect of that part. Ground 7 has no real prospect of success.

60. Ground 8 states that the Judge had "no regard to those parts of the KPLLP Costs Application, which MWP won". The submission asserts that the Second Defendant "failed to revisit and reopen the prior Costs Judgments and Orders".

61. In reality, the Judge said he would not make wasted costs orders because it is too late. Nor is it accurate that the Judge had "no regard" to that in his costs assessment. He did had regard to it. He said, in terms (Order, para 7):

> "[The Second Defendant] won on all the substantial issues decided in the judgment, save for the wasted costs order sought in the alternative to the order under Rule 26.26 which formed in practice KPLLP's primary case. Little time was spent on that alternative issue and in my view KPLLP's failure on it does not warrant any reduction in the amount of costs awarded to KPLLP, let alone a separate award in Mr Wilson's favour on that issue."

62. The wasted costs issue was taken into account. It simply did not change the result. A broad discretion is afforded to first instance judges on matters of costs. It would require an error of principle or a decision which no reasonable judge could make to justify an appeal court interfering. This ground has no real prospect of success.

63. Ground 9 asserts actual or apparent bias against the Judge. A number of points are made in support of this position.

64. First, it is said that bias is evident from the fact that the Judge expressed sympathy for the Second Defendant. That is not indicative of any bias. The Judge noted that he would not have found Mr Wilson liable under the Rules governing wasted costs. That was because the remedy was no longer available, not because the test for wasted costs was otherwise unsatisfied. The Judge's expression of sympathy was merely a statement to the effect that he understood the force of the criticisms made by the Second Defendant of the litigation conduct of the Claimant which, he had found, was

caused by Mr Wilson. The Judge had considered the evidence and was entitled to reach that conclusion. The language used is entirely normal and is routinely used by Judges.

65. Second, it is said that bias is evident from the Judge's exclusion of evidence submitted by the Claimant and his refusal to allow cross-examination of the Second Defendant's witnesses. It is not said those decisions were wrong, but that they were biased. It is not said that these steps made any difference to the outcome, nor how, if that were the case. The Judge gave careful consideration to those issues and explained why he made the decisions he did. Disagreement with a Judge's decisions is no reason to assert bias. The decisions were unsurprising, given (a) the very late production of new evidence and (b) the lack of any application for cross-examination. It is not correct to say that "no notice of cross-examination is required by the law or Rules". The hearing was not a trial. Rules 18.25 and 18.26 deal with applications to cross-examine other than at trial.

66. There is a complaint that the Judge accepted the assertions of the Second Defendant's lawyer as to the number and nature of communications sent by Mr Wilson in the course of the proceedings. However, that is precisely the sort of issue on which a party's lawyer can give evidence. Nor is it even said what aspects of that evidence were wrong and how that could have affected the outcome. These are certainly not *indicia* of bias.

67. There is further complaint that the Judge "failed to accept the Certificate of Incumbency". The certificate is not produced. However, this may be a reference to a certificate signed by the Claimant's registered agent in the BVI to the effect that Mr Wilson was not the director, shareholder or officer of the Claimant. This was referred to by the Judge at [47], so it was considered. In any event, the Judge did not find that Mr Wilson owned or controlled the Claimant in general. He found that Mr Wilson controlled the litigation.

68. The complaint (also at paragraph 53) that the Judge went on to "create and invent evidence of his own" is wholly unparticularised. Reference is made to paragraphs 47 to 50 of the Judgment. However, the only actual submission made is that "There is no such thing in Kazakh law as a "First Director" of a branch." This appears to be a reference to paragraph [49] of the Judgment in which the Judge referred to a document issued by the Kazakh authorities on 11 December 2024. In that document, Mr Wilson is described as, amongst other things, "First Director". In my view, there was no basis whatsoever for these submissions. Nothing in the Judgment indicates that the Judge had pre-determined issues.

69. Finally, it is said that bias is apparent from the Judge's failure to find that the Second Defendant was subject to the Court's jurisdiction because it was owned by an AIFC entity. That is wholly irrelevant to the issues under consideration by the Judge.

70. In the circumstances, none of the grounds of appeal advanced has any real prospect of success. Even if permission to appeal had been sought by Mr Wilson (rather than by the Claimant), I would have refused the application.

71. As I have refused permission to appeal, there is no possible justification for granting a stay. I therefore refuse the Claimant's application for a stay.

72. If the Second Defendant wishes to claim costs against any person as a result of these applications, they should make any application within 14 days.

By the Court,

Tom Montagu-Smith KC,

Justice, AIFC Court

**Representation:**

The Claimant was represented by Mr Michael Wilson and Mr Yermek Aubakirov, of Michael Wilson & Partners, Limited, Almaty, Kazakhstan.

The First Defendant did not appear and was not represented.

The Second Defendant was represented by Ms Mariya Petrenko, Associate at TKS Disputes, Almaty, Kazakhstan.

The Third Defendant was represented by Mr Usen Tastanbekov, Junior Associate at Kinstellar, Almaty, Kazakhstan.