

IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

17 March 2026

CASE No: AIFC-C/CFI/2025/0048

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

v.

(1) CJSC KAZSUBTON

(2) KAZPHOSPHATE LLP

(3) KAZPHOSPHATE LIMITED

Defendants

JUDGMENT AND ORDER

Justice of the Court:

Justice Tom Montagu – Smith KC

ORDER

UPON the Claimant's claim inter alia to set aside two letters issued by the AIFC Court in relation to the execution of a AIFC Court Judgment and Order.

AND UPON the Judgment of Justice Sir Stephen Richards dated 23 September 2025 dismissing the claim.

AND UPON the Claimant's application for permission to appeal and for a stay of execution pending appeal ("the Application").

AND UPON reading the submissions of the parties.

IT IS ORDERED THAT:

1. The Application is dismissed.
2. Any party claiming their costs associated with the Application shall file and serve costs schedules and brief written submissions of no more than 3 A4 pages by 16:00 Astana time on Tuesday 31 March 2026.
3. In the event that any party files costs schedules or submissions in accordance with paragraph 2 above, any other party may file a response by 16:00 Astana time on Thursday 26 March 2026.

JUDGMENT

1. This is an application for permission to appeal brought by the Claimant in respect of the Judgment (“the Judgment”) and Order of Justice Sir Stephen Richards dated 23 September 2025 (“the Judge”).
2. The grounds for the application are set out in a document entitled “MWP’s Outline Grounds of Appeal”. The document is dated 14 October 2025. That document advances seven grounds of appeal.
3. The claim in these proceedings arises out of costs orders made against MWP in favour of the Second and Third Defendants (“the Defendants”) as long ago as 31 October 2023 (“the Costs Order”). MWP has not paid those costs orders in full. As a result, the Defendants took steps to commence enforcement against MWP.
4. On 30 November 2023, the Second Defendant applied without notice for execution orders in respect of the Costs Order. The Third Defendant made a similar application on 13 December 2023. The Registrar, in his capacity as execution judge, issued Execution Orders on 23 February 2024. On the same day, by letters, he sent the Execution Orders, together with the Costs Order to the Chairman of the Republican Chamber of Private Enforcement Agents of the Republic of Kazakhstan (“the RCPEA”). Those letters referred to themselves as “Application[s] on the initiation of enforcement proceedings”.
5. On 3 June 2025, MWP issued the instant proceedings seeking declarations that the “applications” were void and should be rescinded and set aside. MWP’s central complaint was that, in issuing the letters to the RCPEA, the Court had made applications on behalf of the Defendants and so had “entered the fray”.
6. Pleadings followed. On 23 July 2025, the Judge issued directions providing, among other things, for further exchange of submissions, evidence and bundles. The directions listed the claim to be heard on 10 September 2025, with a time estimate of 1.5 hours.
7. MWP sought to vary those directions, principally on the basis that MWP was “fully committed” on various of the dates provided for in the timetable, including the hearing date. That application was refused on 26 August 2025. MWP sent emails on 28 and 29 August 2025 and on 4, 8 and 9 September 2025 complaining about that decision. However, no application for permission to appeal was made.
8. On 9 September 2025, the day before the hearing, MWP filed a fresh application seeking disclosure, directions and relisting of the hearing. MWP attended the hearing on 10 September through Mr Wilson and Mr Aubakirov who made oral submissions on its behalf.
9. The Judge heard argument on the disclosure and relisting application and refused it. In his Judgment, he explained that the Registry had already undertaken an extensive search for documents and that the Defendants had nothing more to disclose. Further disclosure would not achieve any useful purpose. Absent further disclosure, there was no good reason to adjourn.
10. Mr Wilson then made an oral application seeking recusal of the Judge. That application was also refused. In his Judgment, the Judge explained that the application was essentially argued on the basis

that no impartial judge would have refused the disclosure and relisting application. He found there was nothing to lead a fair minded and informed observer to conclude that there was a real possibility of bias.

11. The Judge then heard submissions on the claim from counsel, including from Mr Wilson and Mr Aubakirov on behalf of MWP.
12. In the Judgment, the Judge rejected the claim. He set out in detail the mechanism and legislative provisions by which judgments of the AIFC Courts may be enforced in Kazakhstan. He noted the Cooperation Agreement dated 26 February 2019 between the AIFC Court and the RCPEA, which is the central, supervisory body for regional enforcement agents in Kazakhstan. The terms of the Cooperation Agreement provided a mechanism by which the AIFC Court may provide a judgment to the RCPEA for enforcement. The Judge found that the terms of the Cooperation Agreement were undoubtedly consistent with the applicable law.
13. The Judge noted that there were two ways in which a party may proceed when they receive an Execution Order. They may apply to a bailiff themselves. Alternatively, they may ask the AIFC Court to send the Execution Order to the RCPEA for enforcement. The second option does not involve the AIFC Court making any application. The use of the word “application” in each of the AIFC Court’s letters was therefore inapt. However, it did not alter the substance of what was simply an administrative act. There was therefore no question of the Court “entering the fray”.
14. The Judge similarly rejected the criticism that the procedure could be undertaken without giving notice to the judgment debtor. The Rules and Cooperation Agreement expressly permitted that.
15. The Judge noted that the AIFC Court had jumped the gun in that it had sent the Execution Orders to the RCPEA before the judgment creditors had actually issued any request. However, the Defendants would have made a request had they been alerted to the issue. Setting aside the two letters to the RCPEA and insisting on restarting the process would achieve nothing but additional cost and delay. In his discretion, the Judge therefore refused to set aside the letters.
16. MWP applied for permission to appeal and a stay pending appeal. The Outline Reasons for appeal were dated 14 October 2025. The application appears to have been issued on 28 October 2025. On 2 November 2025, MWP filed a further document containing submissions principally in support of the stay application. A further version was filed on 3 November 2025. The documents state that a skeleton argument and more submissions will follow. The Third Defendant objects to the later submissions. However, I am content to consider all of the material. That does not mean that the Court endorses the provision of serial unsolicited submissions by parties.
17. 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.”

18. It is not suggested that sub-paragraph (2) is engaged. I therefore proceed to consider whether the grounds advanced have real prospects of success.
19. Ground 1 asserts that there has been a failure to comply with and breaches of the Overriding Objective. Paragraph 7 simply asserts that “the record shows and proves” that the Judge breached various parts of the Overriding Objective. The complaint is wholly unparticularised. As such, it has no real prospect of success.
20. Ground 2 complains about the Judge’s rejection of the late application for disclosure and relisting of the hearing.
21. First, MWP complains about the manner in which the hearing was fixed in the first place, which was said to be without regard to the parties’ availability. That is a complaint about the earlier decisions made on 23 July 2025 and 26 August 2025. There was no appeal against those decisions. In any event, they were case management decisions and the Court of Appeal would not interfere absent some error of principle. That is not even alleged. The Court cannot always accommodate the availability of particular individuals. In any event, the individuals concerned proved able to attend. There is nothing in this complaint.
22. Second, MWP complains about the refusal of the disclosure application “seeking inspection of all originals and full and frank disclosure”. No explanation is given of precisely what material should have been ordered to be disclosed, nor of what relevance that would have had to the case. It is impossible to see how copies of originals of any documents or any further disclosure could have affected the outcome. The Judge found, as a matter of law, that the Court had not “entered the fray”. Insofar as it had sent letters without a prior request, that was not a reason to set aside the letters. None of that analysis could have been affected by further disclosure.
23. Given the timing of the disclosure application – on the eve of the hearing – it is unsurprising that the Judge rejected the application.
24. In any event, the Judge’s decision was a case management decision with which the Court of Appeal would be very slow to interfere.
25. Ground 2 has no prospect of success.
26. Ground 3 asserts, again, that the Judge erred in failing to order inspection and disclosure.
27. Paragraph 14 asserts that the “the documents and evidence” proves that Registry concealed the underlying applications and the Cooperation Agreement until ordered to produce them. The Judge is criticised for failing to draw adverse inferences. The proposed inferences are not explained. There is no particularised allegation that the Registry failed to produce anything it had been ordered to produce.

28. Paragraph 16 suggests that the Defendants should have produced drafts of the CCH Applications and various categories of “correspondence and documents”. There is no explanation of how this might have affected the outcome of the claim before the Judge.
29. Ground 3 has no prospect of success.
30. Ground 4 complains about the Judge’s refusal to recuse himself.
31. The basis for this allegation is that almost all of MWP’s applications have been rejected. The proper course for challenging the rejection of an application is an appeal. The fact that MWP has failed in most of its applications, even if accurate, provides no support whatsoever for an allegation of bias, which should never have been made.
32. The Judge directed himself to the correct test – whether a fair-minded, informed observer would have grounds to consider the Judge was biased – and found there was nothing that would remotely suggest the test was met. I agree.
33. Ground 4 has no prospect of success.
34. Ground 5 asserts that the making of applications by the AIFC Registry to the RCPEA is not an administrative task, but constitutes the making of an application.
35. The ground is little more than assertion. There is no attempt to engage with the reasons why the Judge found that the submission (to put it neutrally) of a letter and Execution Order to the RCPEA is not an application.
36. I have no doubt whatsoever that the Judge was correct in his analysis. Paragraph 2.1 of the Cooperation Agreement provides that, upon request, the AIFC Court will either issue the Execution Order or, on request of a party, will send it to the RCPEA. Paragraph 2.2 states that, in addition, the Court will serve on the RCPEA (or the party) the relevant decision or order. The Cooperation Agreement therefore requires only the transmission of documents to the RCPEA, an administrative act.
37. The thrust of the complaint, as set out above, is that the Court should not “enter the fray” or act on behalf of a judgment creditor. There is no arguable basis for asserting that the Court does so where it provides documents to the RCPEA in accordance with the Cooperation Agreement.
38. Ground 5 has no prospect of success.
39. Ground 6 complains that, having found the Court acted without a request from the Defendants, the Judge nevertheless refused to set aside the letters. MWP asserts that the Judge was “not entitled to speculate” that the Defendants would have made requests had their attention been drawn to the issue. It is further said that the Judge “failed to take into account... the injury, losses, damages and costs suffered and incurred by MWP...” No explanation is provided as to what injury, loss, damage and costs has been suffered.

40. I find these submissions quite unreal. MWP has been ordered to pay sums to the Defendants. It has failed fully to comply. The Defendants have therefore sought Execution Orders. The Court sent those orders to the RCPEA before requests were made by the Defendants. However, the Defendants have confirmed that they would have so requested. More to the point, if the letters were set aside, they would so request and the process would start again, with the only result being delay and additional cost. All of this could be avoided by MWP simply complying with the Court's orders.
41. The Judge was well within his rights to refuse the application in the exercise of his discretion. More than that, his decision was plainly right.
42. Ground 6 has no prospect of success.
43. Ground 7 complains about the Judge's decision on costs.
44. A decision on costs is within the discretion of the Judge. The appeal court will only interfere if there is an error of principle or the judge makes an order which no reasonable judge could have made.
45. The complaint is that the applications "were concealed". A complaint of concealment implies an obligation of disclosure. There was none, as the Judge found. Judgment creditors are entitled to request Execution Orders without notice. Nor is there any finding that the Cooperation Agreement was concealed. The Court was directed to search for and produce certain categories of documents and it did so. The Judge found that there was nothing more which could usefully be produced.
46. Ultimately, MWP's claim failed. The Judge was entitled to decide that costs should follow the event. All the more so in circumstances where the claim is itself a failed attempt to avoid paying costs orders.
47. Ground 7 has no prospect of success.
48. MWP's supplementary submissions largely address the stay application. Given permission to appeal has been refused, there is no arguable basis for a stay. The submissions assert a set off. However, that is not an issue which arises on the appeal and appears, in any event, to be an attempt to invoke the very judgments which this Court refused to recognise and enforce in the proceedings which led to the Costs Order. They do nothing to support the merits of the appeal.
49. In the circumstances, I refuse permission to appeal and I refuse the application for a stay pending appeal.

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.