



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

19 June 2026

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

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

v.

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

Defendants

ORDER

Justice of the Court:

Justice Tom Montagu-Smith KC

ORDER

UPON the Judgment dated 6 May 2025 and Order dated 13 June 2025 of Justice Sir Stephen Richards.

AND UPON the Claimant's application for permission to appeal and ancillary orders ("the PTA Application").

AND UPON the Order of Justice Tom Montagu-Smith KC dismissing the application and inviting submissions on costs.

AND UPON receiving submissions from the Second Defendant and email correspondence from the Claimant.

IT IS ORDERED THAT:

1. The Claimant shall pay the Second Defendant's costs of the PTA Application, assessed in the sum of KZT 1,250,000, within 14 days.

REASONS

1. On 17 March 2026, I refused the Claimant permission to appeal against an order and judgment of Sir Stephen Richards. As set out in that Judgment, my clear view was that the application was misconceived. Amongst other matters, the appeal was made by the Claimant, rather than by Mr Wilson, against whom Sir Stephen's order had been made. In addition, none of the proposed grounds of appeal had any real prospect of success. A number made broad assertions which were unparticularised and unsupported by analysis. Many did not engage at all with the reasons given by the Judge. Others were self-defeating. The Claimant alleged bias against the Judge, a serious complaint for which there was no support whatsoever.
2. On 31 March 2026, the Second Defendant submitted an application for its costs of resisting the Claimant's application for permission to appeal. The Claimant wrote to the Court purporting to "exercise [] its rights of oral renewal". On 14 April 2026, I refused that request. I further made directions for an exchange of submissions and evidence on the Second Defendant's costs application. The Claimant did not formally respond to that direction. However, in an email, it asserted that respondents to applications for permission to appeal should not be entitled to their costs, relying on a decision of the Chief Justice in AIFC Case No. AIFC-C/CA/2025/0004 at [17]. I decided to treat that email as the Claimant's response submissions and directed the Second Defendant to respond within 7 days. The Second Defendant has now done so.
3. As the Second Defendant points out, the Court has a wide discretion to award costs. The Court Rules state:

"26.4 The Court has discretion as to:
(1) whether costs are payable by one party to another;
(2) the amount of those costs; and
(3) when they are to be paid.
4. The Claimant relies on the following passage from the case referred to above:

“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.”

5. The Second Defendant argues that the general rule referred to by the Chief Justice should be displaced in this case for the following reasons:
 1. The proposed appeal raised multiple grounds and a number of ancillary requests, for a stay, for an oral hearing and for a hearing by 3 justices. As such, the response was not (and could not be) a “short document”.
 2. The application was incomplete and misleading for a number of reasons. The response submissions were directed at correcting and supplementing matters which would not have been apparent from the underlying judgment alone.
 3. The Second Defendant did not raise any ancillary matters.
6. In my view, the Second Defendant’s third point is neutral. It provides no particular support for the application. However, there is force in the other two points.
7. As to the first point, it is correct that the application raised by the Claimant went beyond the application for permission to appeal seeking, inter alia, a stay. No doubt further, additional costs were incurred in respect of the application for oral renewal. That application was wholly misconceived, as the Claimant must have known, having been refused another, similar application before, in Sir Stephen’s judgment of 28 August 2024 in case AIFC-C/CFI/2024/0018.
8. As to the second point, it is in my view fair to characterise the application for permission to appeal as incomplete. It is also accurate that it was made out of time and by the wrong party and that the grounds were not adequately articulated. It was reasonable for the Second Defendant to file submissions seeking to correct those matters.
9. I also take into account the fact that this litigation has been protracted and has been the subject of a number of applications and multiple informal communications by the Claimant to the Court which have not been contained in formal applications. All of this will have driven up costs.
10. In the circumstances, my view is that it would be appropriate in this case to depart from the general rule identified by the Chief Justice and make some award for costs to reflect (a) the Second Defendant’s response to the ancillary applications and (b) the need to correct inaccuracies and omissions in the application.

11. The Second Defendant seeks an order for KZT 2,500,000. The sum comprises a total of 3 hours of partner time and 13 hours of senior associate time. The Claimant has provided no submissions whatsoever on this sum.
12. In my view, those sums are reasonable. However, the Second Defendant's response submissions went beyond simply pointing out inaccuracies and responding to ancillary applications. Doing the best I can, I assess the Second Defendant's costs associated with meeting the ancillary applications and inaccurate and incomplete submissions at KZT 1,250,000.

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, Senior Associate at TKS Disputes, Almaty, Kazakhstan.

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