



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

19 June 2026

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

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 23 September 2025 of Justice Sir Stephen Richards.

AND UPON the Claimant's application for permission to appeal and for 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 Third Defendant and email correspondence from the Claimant.

IT IS ORDERED THAT:

1. The Claimant shall pay the Third Defendant's costs of the PTA Application, assessed in the sum USD 2,500, 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 and made directions for the exchange of submission on costs.
2. On 31 March 2026, the Third Defendant submitted an application for its costs of resisting the Claimant's application for permission to appeal. The Claimant did not respond to that application, but wrote to the Court purporting to "exercise [] its rights of oral renewal". On 14 April 2026, I refused that request and extended the time for the Claimant to respond on costs.
3. The Claimant again did not formally respond to that direction. However, in an email to the Court, 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].
4. On 1 June 2026, the Third Defendant helpfully provided submissions responding to that point, which I have considered. On 11 June 2026, the Claimant stated that it intended to file yet further submissions. I have given the Claimant two previous opportunities to file submissions, which it has failed to take up. I will not allow the Claimant a yet further opportunity, which will simply delay these matters.
5. 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."

6. The passage relied on by the Claimant is as follows:

"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.”

7. The Third Defendant points out that this is not an absolute rule. It argues that the general rule referred to by the Chief Justice should be displaced in this case for the following reasons:
 1. The Third Defendant provided helpful and necessary assistance in dealing with the application.
 2. The appeal was hopeless, as the appellant ought to have known.
8. The Third Defendant also relies on the fact that the application was part of a “protracted saga of futile litigation” and on the fact that the request for oral renewal was misconceived, as the Claimant should have known.
9. Taking all these factors into account, I agree that the Third Defendant should be entitled to some award of costs. In my view, it is unsurprising that the Third Defendant would incur a modest amount of costs in assisting the court with a response, particularly in the context of this protracted litigation.
10. The Third Defendant seeks an order for USD 3,272.00. That is a modest sum, comprising just 1 partner hour and 15.9 associate hours. No doubt some of the costs have been incurred in volunteering submissions which, in an ordinary case, would fall within the general rule and not attract a costs award. Doing the best I can, I assess the Third Defendant’s costs at USD 2,500.

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 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.