

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2022/0002

BETWEEN:

WWRT LIMITED

Appellant/Applicant

and

[1] CAROSAN TRADING LIMITED

[2] BORIS KAUFMAN

Respondents

Before:

The Hon. Mde. Gertel Thom
The Hon. Mde. Vicki-Ann Ellis
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Andrew Ayres, KC with him Dr. Alecia Johns for the Appellant/Applicant
Mr. Brian Lacy for the 1st Respondent
Mr. Richard Morgan, KC and Mr. Richard Brown for the 2nd Respondent

2023: February 6;
May 11.

Application for conditional leave to appeal to His Majesty in Council – Section 3(2)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 – Whether the intended appeal raises questions of great general or public importance or otherwise – Fresh evidence – Ladd v Marshall principles – The test for the adducing fresh evidence on appeal – Forum conveniens – The impact of armed conflict on the question of forum conveniens – The Court’s treatment of ‘serious issue to be tried’ as a review of the exercise of a trial judge’s discretion

WWRT Limited (“WWRT”) is a company incorporated in England and Wales. In the court below, it claimed to be the indirect assignee of various tortious claims of a Ukrainian bank (“the Bank”) against Carosan Trading Limited (“Carosan”), a Territory of the Virgin Islands (“BVI”) company, and Mr. Boris Kaufman (“Mr. Kaufman”), a Ukrainian businessman. The Bank became insolvent and its rights in respect to the loans were sold to Star Investment

One LLC, which assigned its rights to WWRT (the “Star Assignment”). WWRT claimed that these assignments included the Bank’s rights to causes of action in tort against the respondents by operation of Article 514 of the Civil Code of Ukraine (the “CCU”). WWRT as such commenced proceedings against Carosan, as of right, and against Mr. Kaufman pursuant to rule 7.3(2)(a) of the Civil Procedure Rules 2000. WWRT also claimed compensation under BVI law against Carosan and damages against both respondents pursuant to Article 1166 of the CCU.

In June 2021, a trial judge granted WWRT permission to serve Mr. Kaufman outside the jurisdiction in Ukraine (“the service-out order”). However, in September 2021, the learned trial judge set aside the service-out order, finding that there was no serious issue to be tried because the assignment under which WWRT derived title to sue had not been effective to assign those claims. The learned judge having found no serious issue to be tried, declared that the BVI court had no jurisdiction to try the claim against Mr. Kaufman, and that it would not exercise its jurisdiction to try the claim against Carosan, on the ground of *forum non conveniens* and that Ukraine was the more natural and appropriate forum for the claim.

WWRT appealed, arguing that the learned judge erred in setting aside the service-out order, in displacing the BVI with Ukraine as the *forum conveniens* for trying the claims against the respondents, in the exercise of his discretion in finding that there was no serious issue to be tried and in holding that the right to sue the respondents, in respect of tortious claims pursuant to Article 1166 of the CCU, had not been transferred to WWRT. The Court of Appeal, in its judgment, concluded that the learned judge did not err in determining that there was no real prospect of showing that the Star Assignment had been effective to transfer to WWRT the right to sue in respect of tortious claims under Article 1166 of the CCU and further that the learned judge was entitled to displace the BVI in favour of Ukraine as the *forum conveniens* for trying the claims brought by WWRT. Before the hearing of the appeal, WWRT also sought to adduce fresh evidence in relation to the ongoing armed conflict in Ukraine which commenced after the hearing and determination of the application to set aside the service-out order. The Court was not satisfied having regard to the Ladd v Marshall principles that the fresh evidence should be allowed on the hearing of the appeal.

Being dissatisfied with the judgment of the Court of Appeal, WWRT has applied to this Court for leave to appeal to His Majesty in Council pursuant to section 3(2)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 (the “1967 Order”), on the basis that the intended appeal raises questions of great general or public importance or otherwise and provides a unique opportunity for the Privy Council to clarify the following: (i) the test for the adducing fresh evidence on appeal (where the evidence relates to matters occurring after the hearing of the application before the judge); (ii) the impact of armed conflict on the question of *forum conveniens*; and (iii) the Court’s treatment of ‘serious issue to be tried’ as a review of the exercise of a trial judge’s discretion.

Held: granting conditional leave to appeal to His Majesty in Council and making the orders set out at paragraph [25] of this judgment, that:

1. In order to meet the criteria, set out in section 3(2)(a) of the 1967 Order, an applicant must demonstrate that the issues raised in their proposed appeal raise a question

of great general or public importance, or otherwise. Leave under this section is normally granted where there is a difficult question of law involved.

Section 3(2)(a) of the **Virgin Islands (Appeals to the Privy Council) Order 1967** S.I. No. 234 of 1967 applied; **Martinus Francois v The Attorney General** Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported) followed; **Renaissance Ventures Ltd et al v Comodo Holdings Ltd** BVIHCP2018/0005 and BVIHCP2018/0008 (delivered 8th October 2018, unreported) followed.

2. The principles in **Ladd v Marshall** have been applied consistently by this Court in requiring the fresh evidence to be in existence at the date of the hearing but could not have been obtained with reasonable diligence for use at the trial. In so far as the decisions in **Staray Capital Limited et al v Cha, Yang (also known as Stanley)** and **Adam Bilzerian v Gerald Lou Weiner et al**, where documents which post-dated the hearing were admitted into evidence, may be construed as being inconsistent with this Court's decision in the appeal below, the Court could benefit from the guidance of the Privy Council.

Ladd v Marshall [1954] 1 WLR 1489 considered; **Staray Capital Limited et al v Cha, Yang (also known as Stanley)** BVIHCP2013/0009 (delivered 14th July 2014, unreported) considered; **Adam Bilzerian v Gerald Lou Weiner et al** SKBHCP2019/0033 (delivered 21st July 2020, unreported) considered.

3. The instant case has presented unique circumstances, specifically armed conflict, which treatment has not been addressed in any other Commonwealth Caribbean case known to this Court. Further, counsel for the parties were unable to assist this Court with any authority which gave guidance on how a supervening event such as armed conflict should be factored into the test. This no doubt creates a genuine uncertainty not only for this case but for other future forum cases heard by this Court. This aspect of the proposed appeal meets the criteria of great general importance and the Court would benefit from guidance by the Privy Council in this respect.

The Spiliada, Spiliada Maritime Corp v Consulex Ltd [1987] AC 460 considered.

4. While the Court in the appeal below used the phrase 'blatantly wrong' in reviewing whether the trial judge had erred in his assessment on the serious issue to be tried, the Court was not seeking to determine the matter based on whether the learned judge had exercised a discretion properly. The Court did not seek to change the application of the test whether there was a serious issue to be tried. The Court, having examined the learned judge's application of the test, was satisfied that the learned judge did not err in the manner submitted by counsel. In so doing the Court stated the learned judge was not 'blatantly wrong'. In my view, no serious issue of great general or public importance arises on this point for which the Court requires guidance from His Majesty in Council.

JUDGMENT

- [1] **THOM JA:** The applicant, WWRT Limited (“WWRT”) seeks leave to appeal to His Majesty in Council against the judgment of the Court of Appeal delivered on 20th July 2022, which dismissed WWRT’s interlocutory appeal and application to adduce fresh evidence and awarded costs on both the interlocutory appeal and application to adduce fresh evidence. WWRT contends that its case is an appropriate one for this Court to grant leave to appeal to the Judicial Committee of the Privy Council (the “Privy Council”) on the basis that, pursuant to section 3(2)(a) of the **Virgin Islands (Appeals to the Privy Council) Order 1967**,¹ (the “1967 Order”) the intended appeal is from a decision in civil proceedings which raises questions that, by reason of their great general or public importance or otherwise, ought to be submitted to His Majesty in Council.

Background

- [2] WWRT is a company incorporated in England and Wales. In the court below, it claimed to be the indirect assignee of various tortious claims of a Ukrainian bank (“the Bank”) against Carosan Trading Limited (“Carosan”), a Territory of the Virgin Islands (“BVI”) company, and Mr. Boris Kaufman (“Mr. Kaufman”), a Ukrainian businessman. WWRT claims that the Bank was a victim of a complex fraud carried out by Carosan and Mr. Kaufman. WWRT alleged that it involved various Ukrainian borrowers, borrowing monies under loan agreements with the Bank and transferring and recycling the said monies to offshore companies, including Carosan. WWRT alleged that these loans were not legitimate commercial loans as most of these loans were never repaid and that they were taken for the benefit of both Carosan and Mr. Kaufman.
- [3] The Bank became insolvent and its rights in respect to the loans were sold to Star Investment One LLC, which assigned its rights to WWRT (the “Star Assignment”). WWRT claimed that these assignments included the Bank’s rights to causes of

¹ S.I. No. 234 of 1967.

action in tort against the respondents by operation of Article 514 of the Civil Code of Ukraine (the “CCU”). WWRT as such commenced proceedings against Carosan, as of right, and against Mr. Kaufman pursuant to rule 7.3(2)(a) of the **Civil Procedure Rules 2000**. WWRT also claimed compensation under BVI law against Carosan and damages against both respondents pursuant to Article 1166 of the CCU. In June 2021, a trial judge granted WWRT permission to serve Mr. Kaufman outside the jurisdiction in Ukraine (“the service-out order”). However, in September 2021, the learned trial judge set aside the service-out order, finding that there was no serious issue to be tried because the assignment under which WWRT derived title to sue, had not been effective to assign those claims. The learned judge having found no serious issue to be tried, declared that the BVI court had no jurisdiction to try the claim against Mr. Kaufman, and that it would not exercise its jurisdiction to try the claim against Carosan, on the ground of *forum non conveniens* and that Ukraine was the more natural and appropriate forum for the claim.

The Appeal

- [4] WWRT appealed, arguing that the learned judge erred in setting aside the service-out order and in displacing the BVI with Ukraine as the *forum conveniens* for trying the claims against the respondents. WWRT argued that the learned judge erred in the exercise of his discretion in finding that there was no serious issue to be tried and in setting aside the service-out order and that he erred in holding that the right to sue the respondents, in respect of tortious claims pursuant to Article 1166 of the CCU, had not been transferred to WWRT. Further, WWRT argued that the learned judge erred in finding that BVI was not the appropriate forum and that he erred in the exercise of his discretion by considering irrelevant factors and disregarding relevant ones.
- [5] The Court of Appeal in its judgment, concluded that the learned judge did not err in determining that, as a matter of construction of the Star Assignment and by operation of Article 514 of the CCU, there was no real prospect of showing that the Star Assignment had been effective to transfer to WWRT the right to sue in respect of

tortious claims under Article 1166 of the CCU. This Court also concluded that the learned judge was entitled to displace the BVI in favour of Ukraine as the *forum conveniens* for trying the claims brought by WWRT, as the respondents were able to provide evidence that demonstrated that Ukraine was clearly the more appropriate forum, and that there were several connecting factors pointing to Ukraine being the natural forum to determine the claims.

- [6] Before the hearing of the appeal, WWRT also sought to adduce fresh evidence in relation to the ongoing armed conflict in Ukraine which commenced after the hearing and determination of the application to set aside the service-out order. This Court was not satisfied having regard to the **Ladd v Marshall**² principles that the fresh evidence should be allowed on the hearing of the appeal.

Leave to Appeal to His Majesty in Council

- [7] Being dissatisfied with the judgment of the Court of Appeal, WWRT has applied to this Court for leave to appeal to His Majesty in Council. As it is an interlocutory appeal, WWRT seeks leave pursuant to section 3(2)(a) of the 1967 Order, on the basis that the intended appeal raises questions of great general or public importance or otherwise and provides a unique opportunity for the Privy Council to clarify the following:

- (i) The test for adducing fresh evidence on appeal (where the evidence relates to matters occurring after the hearing of the application before the judge).
- (ii) The impact of armed conflict on the question of *forum conveniens*; and
- (iii) The Court's treatment of 'serious issue to be tried' as a review of the exercise of a trial judge's discretion.

- [8] Section 3(2)(a) of the 1967 Order reads:

² [1954] 1 WLR 1489.

“Subject to the provisions of this Order, an appeal shall lie from decisions of the Court to Her Majesty in Council with the leave of the Court in the following cases –

- (a) where in the opinion of the Court the question involved in the appeal is one that, by reason of its **great general or public importance or otherwise**, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; ...”
(emphasis added)

[9] In order to meet the criteria, set out in section 3(2)(a), WWRT must demonstrate that the issues raised in their proposed appeal raise a question of great general or public importance, or otherwise. In **Martinus Francois v The Attorney General**,³ Saunders JA (as he then was) held that leave under this section is normally granted ‘where there is a difficult question of law involved’. Saunders JA stated that:

“In construing the phrase ‘great general or public importance’, the Court usually looks for matters that involve **a serious issue of law**; a constitutional provision that has not been settled; **an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public.**” (emphasis added)

[10] This principle has been restated many times by this Court, including in **Renaissance Ventures Ltd et al v Comodo Holdings Ltd**⁴ where Mendes JA [Ag.] stated:

“... Where there is no genuine dispute on the applicable principles of law underlying the question which the applicant wishes to pursue on his or her proposed appeal, a question of great general or public importance does not ordinarily arise, especially where the principle of law is settled either by the highest appellate court or by longevity of application. **Where the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or there is some genuine uncertainty surrounding the principle itself, or it is considered to be far reaching in its effect, or given to harsh consequences, or for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships’ Board.** Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground. In such a case, the question on the proposed appeal

³ Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported).

⁴ BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 8th October 2018, unreported).

may be of great importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance.

[11] It follows as well that the question of law which is said to be of great general or public importance must genuinely arise from the way the case was decided in the Court of Appeal. The question must be 'involved' in the appeal. Such a question cannot arise if it was not raised on the appeal, or if the principle of law which the applicant wishes to have settled by the highest court has not been put in doubt." (emphasis added)

Submissions of the Applicant

- [11] Counsel for WWRT, Mr. Ayres, KC argued that the Court erred in dismissing the application to adduce fresh evidence on appeal and to amend the grounds of appeal, based on the supervening unavailability of Ukraine as an appropriate forum as a result of Russia's invasion. He argued that the Court's decision was made on the basis that the evidence that was being sought to be adduced of the armed conflict in Ukraine, had not been in existence at the time of the trial in the lower court, and as such, it did not satisfy the first limb of the **Ladd v Marshall** test. Learned Counsel argued that the Court's decision conflicts with previous decisions of the Court and has created confusion regarding the application of the **Ladd v Marshall** test, particularly in relation to whether the evidence needs to be in existence at the time of the trial. Mr. Ayres submitted that this conflict is a 'serious issue of law' as contemplated in **Martinus Francois v The Attorney General** and that the state of the authorities under this point of law, needed clarification by the Privy Council.
- [12] Mr. Ayres argued that the BVI Court of Appeal has acknowledged in its jurisprudence that it favours a more flexible approach to the **Ladd v Marshall** test. However, in this case, this Court opted for a stricter approach and required 'strong grounds' to merit the exercise of the appellate court's discretion in WWRT's favour. Mr. Ayres also argued that in contrast to this Court's judgment, previous decisions such as **Adam Bilzerian v Gerald Lou Weiner et al**,⁵ and **Staray Capital Limited et al v Cha**,

⁵ SKBHCVA2019/0033 (delivered 21st July 2020, unreported).

Yang (also known as Stanley)⁶ allowed fresh evidence that was not in existence at the time of the trial. He claimed that the evidence of the armed conflict in Ukraine, which came into existence after the trial, should have been allowed to be adduced by this Court.

- [13] Mr. Ayres also addressed the question of whether the evidence sought to be adduced was a material change for which the applicant needed to make an application to the High Court. Mr. Ayres submitted that in this case, it was not appropriate to revisit the lower court on this issue as the judge had already decided that there was no serious issue to be tried. Mr. Ayres posited that this was a matter for the Court of Appeal to determine as it had jurisdiction to exercise its discretion to consider supervening events to meet the ends of justice. Counsel for WWRT argued that this is a serious issue of law, and the clarification or determination of which will have a wider significance than merely determining the private rights between the parties.

Submissions of the Respondents

- [14] Counsel for Mr. Kaufman, Mr. Morgan KC, in his opening submissions maintained that Mr. Kaufman does not submit to the Court's jurisdiction nor does he accept that Ukraine is an unavailable forum, as Ukrainian society continues to function. Mr. Ayres submitted that this Court was correct in its application of the **Ladd v Marshall** test. Mr. Morgan KC submitted that on the test for adducing fresh evidence, the main point is that the evidence sought to be admitted must be relevant to an issue raised at first instance. He argued that not only was the fresh evidence of WWRT not relevant but it is also evidence that came into existence after the trial judge made his order. Mr. Morgan also argued that WWRT in its arguments before this Court was attempting not only to expand the **Ladd v Marshall** test, but also create a moving target and arbitrariness as to when fresh evidence on appeal should be adduced. Mr. Morgan KC posited that WWRT in its submissions did not attempt to identify the relevant alternative point at which this Court should have assessed the 'availability' of the foreign forum. He submitted that it would be entirely arbitrary for the relevant date to

⁶ BVIHCMAP2013/0009 (delivered 14th July 2014, unreported).

be that on which the new evidence happened to be filed, or indeed the hearing of the appeal itself.

- [15] Counsel for Carosan, Mr. Lacy, in support of Mr. Morgan's arguments, made the observation that this matter was one of a material change of circumstances and not fresh evidence. He argued that it was only if there was a serious issue to be tried, then the issue of material change of circumstances would be relevant.

Discussion

- [16] WWRT's main contention is that there are conflicting dicta by this Court as it relates to the application of the first limb of **Ladd v Marshall**. In **Staray Capital Limited** both the appellants and the respondent sought to adduce fresh evidence dated after the trial. In relation to the appellants' application, as stated in paragraph [25] of the judgment, it was not disputed that the fresh evidence application had satisfied the first and third limbs of **Ladd v Marshall**. The evidence that Mr. Cha was a United States national on the date he acquired the Lawyer's Certificate was in existence at the date of the trial and there was cogent evidence on affidavit that it could not have been obtained with reasonable diligence for use at the trial. In relation to the respondent's application, the application was opposed on the first and second limbs. The Court found among other things, at paragraph [35], that the respondent had not adduced evidence which showed that the fresh evidence could not have been obtained for use at the trial and the fresh evidence was not admitted.
- [17] In **Bilzerian**, the fresh evidence which consisted of two judgments and one court order, all of which post-dated the hearing, were admitted into evidence. Counsel for the respondent having referred to **Staray Capital Limited**, conceded that the first limb in **Ladd v Marshall** was satisfied. At paragraph [33] of the unanimous judgment, the Court decided that the principles in **Ladd v Marshall** are applied in a more relaxed manner in interlocutory matters. The Court applied **Staray Capital Limited** and admitted the fresh evidence. The principles in **Ladd v Marshall** have been applied consistently by this Court in requiring the fresh evidence to be in existence at the date of the hearing

but could not have been obtained with reasonable diligence for use at the trial. In so far as the decisions in **Staray Capital Limited** and **Bilzerian**, where documents which post-dated the hearing were admitted into evidence, may be construed as being inconsistent with this Court's decision in the appeal below, the Court could benefit from the guidance of the Privy Council.

[Submissions on] The impact of armed conflict on the question of *forum conveniens*

[18] Mr. Ayres KC argued that if this Court had considered the evidence of the armed conflict in Ukraine, it would have significantly influenced the Court's assessment of the second limb of the principles in **The Spiliada, Spiliada Maritime Corp v Consulex Ltd.**⁷ Consequently, the Court of Appeal's holding that 'the learned judge's decision did not exceed the generous ambit within which reasonable disagreement is possible' would not have been incorrectly made. Mr. Ayres KC submitted that there is no other case in the Commonwealth which specifically addresses the impact of the Ukraine war on the issue of forum, and that makes this case distinctive and by nature raises a question of great general or public importance or otherwise, that must be resolved by the Privy Council.

[19] Mr. Morgan KC, in his submissions, argued that the assessment of identifying a specific forum in certain circumstances is not a topic that raises any significant public or general concerns. He argued that the case raised no question of great general or public importance or otherwise so as to justify the **Spiliada** test being re-examined. Mr. Morgan KC stated that this was merely an attempt by WWRT to obtain a different outcome from a different court, namely the Privy Council.

Discussion

[20] As it relates to the forum issue, this Court has consistently applied the test in **Spiliada**. However, the instant case has presented unique circumstances, specifically armed conflict, which treatment has not been addressed in any other

⁷ [1987] AC 460.

Commonwealth Caribbean case known to this Court. Further, neither Mr. Ayres KC nor Mr. Morgan KC were able to assist this Court with any authority which gave guidance on how a supervening event such as armed conflict should be factored into the test. This no doubt creates a genuine uncertainty not only for this case but for other future forum cases heard by this Court. I accept WWRT's arguments that this aspect of the proposed appeal meets the criteria of great general importance. In my view, the Court would benefit from guidance by the Privy Council in this respect.

Submissions on the Court's treatment of 'serious issue to be tried'

[21] Mr. Ayres submitted that this Court erred in relying on Chief Justice Floissac's guidance in **Dufour and others v Helenair Corporation Ltd and others**⁸ as it was not relevant to the assignment issue on appeal. He argued that this Court's consideration of **Dufour v Helenair** was incorrect and that the Court should have focussed on whether the trial judge had erred in his assessment on the serious issue to be tried and applied the test for determining whether there was a real prospect of success. He stated that the learned judge had wrongly conducted a mini-trial and made a conclusive decision instead of considering the threshold of serious issue to be tried. Mr. Ayres KC also stated that this Court also erred in concluding that the learned judge was entitled to reject Professor Vasylyna's evidence relating to the legal effect of Article 514 of the CCU as 'fanciful' and that the Court made a grave error in its use of the words 'blatantly wrong' while reviewing the findings of the learned judge. This, Mr. Ayres KC argued, raised a serious issue of law, and warranted intervention by the Privy Council.

[22] Mr. Morgan KC in his response stated that it was clear that this Court properly reviewed the decision of the learned judge and arrived at the correct conclusion. Further, after Mr. Kaufman provided a complete translation of the relevant assignment and extensive expert evidence on Ukrainian law was considered, the judge was entitled to review the assignment agreement and expert evidence and determine that the tort claims in question were not assigned, resulting in no serious issue to be tried.

⁸ (1996) 52 WIR 188.

- [23] Mr. Lacy in supporting Mr. Morgan's submissions stated that this Court's use of 'blatantly wrong' in its judgment while reviewing the decision of the learned judge, did not in any way change the test to be applied.

Discussion

- [24] When the decision of the Court on this issue is considered in its entirety, while the Court used the phrase 'blatantly wrong', the Court was not seeking to determine the matter based on whether the learned judge had exercised a discretion properly. The Court did not seek to change the application of the test whether there was a serious issue to be tried. The Court, having examined the learned judge's application of the test, was satisfied that the learned judge did not err in the manner submitted by counsel. In so doing the Court stated the learned judge was not 'blatantly wrong'. In my view, no serious issue of great general or public importance arises on this point for which the Court requires guidance from His Majesty in Council.

Disposal

- [25] I would therefore make the following orders:
1. The application for conditional leave to appeal to His Majesty in Council is granted upon the following conditions:
 - (a) the applicant within 90 days of the date hereof do enter into good and sufficient security in the sum of five hundred pounds sterling for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office;
 - (b) within 90 days of the date hereof, the applicant takes the necessary steps for the purposes of procuring the preparation of the records, the settling of such records with the solicitors for the respondent to this application, and the certification of the record by the Registrar of the Court of Appeal;

- (c) the record shall be prepared in accordance with rules 18 to 20 of the **Judicial Committee (Appellate Jurisdiction) Rules Order 2009** and its Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5; and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.
- (d) Costs of the application for leave to appeal shall be costs in the appeal to His Majesty in Council.
2. The applicant shall make an application to the Court for final permission to appeal to His Majesty in Council, supported by the certificate of the Registrar that the security for costs ordered herein has been given within the time prescribed by this Order to the satisfaction of the Registrar.

I concur.
Vicki-Ann Ellis
Justice of Appeal

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court



Deputy Chief Registrar