

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

**Cause No: G 41 of 2018
(LACV44/2018)**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPEAL

BETWEEN

HS

Applicant

AND

IMMIGRATION APPEALS TRIBUNAL

Respondent

IN CHAMBERS

Appearances: Mr. Alastair David of HSM Chambers for the Applicant
Mr. Michael Smith, Crown Counsel of the Attorney General's Chambers
for the Respondent

Before: The Hon. Justice Ingrid Mangatal

Heard: 25 June 2019

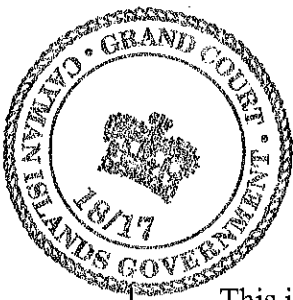
**Draft Ruling
Delivered:** 28 June 2019

**Finalised Ruling
Circulated:** 3 July 2019



HEADNOTE

Section 29(1) of the Court of Appeal Law (2011 Revision) - Grand Court having given judgment in exercise of its appellate jurisdiction - Application made to Grand Court and not Court of Appeal for leave to appeal - Preliminary Points taken - Whether Grand Court has power to grant leave to appeal in circumstances - Whether Single Judge of Appeal can Grant Leave - Whether Grand Court Judge Sitting as Single Judge Can Grant Leave - Sections 2, 6, 31(2), 33 of Court of Appeal Law - Rules 11,15A, 21, 21A and 24 of the Court of Appeal Rules (2014) Revision



RULING

1. This is my Ruling on the two Preliminary Issues raised on behalf of the Respondent.
2. The matter before me is an application for leave to appeal by Applicant (“HS”) from an aspect of my Judgment given on 10 May 2019 in respect of a statutory appeal made under section 17(2) of the *Immigration Law* (2015 Revision) from the Immigration Appeals Tribunal (“**the Tribunal**”). This application has been filed in the Grand Court.
3. This is an application that therefore seeks leave to appeal in respect of a Judgment I have given in the exercise of the Grand Court’s appellate jurisdiction.
4. When the application came on for hearing before me on 25 June 2019, Mr. Smith, of the Attorney General’s Department, appearing on behalf of the Respondent, took two preliminary points. They are as follows:
 - (1) Can the Grand Court grant Leave to Appeal in respect of a judgment given in exercise of its appellate jurisdiction?
 - (2) Can a Grand Court Judge sitting as a Single Judge of the Court of Appeal grant leave to appeal in the circumstances?

Preliminary Point (1): Can the Grand Court grant Leave to Appeal in respect of a judgment given in exercise of its appellate jurisdiction?

5. Reference is made by Mr. Smith, Crown Counsel on behalf of the Respondent to section 29(1) of the *Court of Appeal Law* (2011 Revision) (“the *Law*”) which provides:

“Any person, including the prosecutor, aggrieved by any judgment given or made by the Grand Court in the exercise of its appellate or revisional jurisdiction, whether such judgment has been given or made upon appeal or revision from a court of summary jurisdiction or any other court, board committee or authority exercising judicial powers, and whether or not the proceedings are civil or criminal in nature, may appeal, subject to this



Law, to the Court on any ground of appeal which involves a point of law alone, or against sentence but not upon any question of fact.”

6. The Respondent submits that, notwithstanding the absence of the word “*tribunal*” from section 29(1), this appeal falls squarely within its meaning, and that any other interpretation would result in an absurdity whereby any other appeal from a decision of the Grand Court exercising its appellate or revisional jurisdiction would fall under the section, but those arising from tribunal decisions would not. Reference was made to *Bennion on Statutory Interpretation 7th edition* which reads at paragraph 12.1:

“The presumption against absurdity means that the courts will generally avoid adopting a construction that creates an anomaly or otherwise produces an irrational or illogical result”

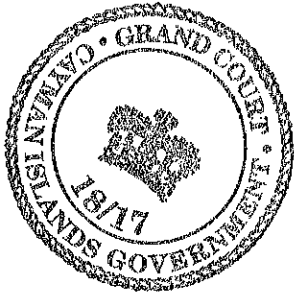
And at 12.4

“Every legal system must seek to avoid unjustified differences and inconsistencies in the way it deals with similar matters. As Lord Devlin said, ‘no system of law can be workable if it has not got logic at the root of it’”

7. Mr. Smith further submits that consistency requires a statutory remedy or other benefit should be available, and should operate in the same way, in all cases of the same kind.
8. Mr. Smith referred to the *Court of Appeal Rules* (2001 Revision) (“the Rules”) which provides, at Rule 11(4)(A)

“... leave of the Court shall be required for an appeal under section 29 (1) of that Law from any decision of the Grand Court in the exercise of its appellate jurisdiction in civil proceedings...”

9. Whilst the term “*Court*” is not defined in *the Rules*, as *the Rules* are themselves made under section 35 of the *Law*, Counsel referred to the *Interpretation Law* (1995 Revision) which provides at section 12(2):



“Where expressions defined in any Law are used in any regulations or instrument made under such Law, such expressions shall have the respective meanings assigned to them by the Law, unless there is anything in the subject or context repugnant to, or inconsistent with, such meaning.”

10. It follows, he argues, that Rule 11(4A) requires that the application for leave should in fact be made to the Cayman Islands Court of Appeal, and not to the Grand Court.
11. Reference was also made by Mr. Smith to Rule 11(5) which provides in relevant part that *“in any case in which leave to appeal is required, an application for leave shall be made to the court below.”*

(Counsel’s emphasis)

12. However, Counsel argued that the *generalibus specialia derogant* principle applies, and he made reference to the well-known authority on Statutory Interpretation, *Bennion* at paragraph 21.4, where it is opined by the learned author as follows:

“It is a principle of construction that, in the absence of any contrary intention, the general gives way to the specific.

Where the literal meaning of a general enactment covers a situation for which specific provision is made in some other enactment within the Act or instrument, it is presumed that the situation is intended to be dealt with by the specific provision.

*The principle was articulated by Sir John Romily MR in **Pretty v Solly** (1859) 26 Beav 606 at 610):*

‘The general rules which are applicable to particular and general enactments in statutes are very clear, the only difficulty is in their application. The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the



former, the particular enactment must be operative, and the general enactment must be taken to affect only the parts of the statute to which it may properly apply.'

*....The principle, as Lord Cooke of Thorndon said in **Effort Shipping Co Ltd v Linden Management SA, The Giannis NK** ([1998] 1 All E R 495 at 513):*

'...it is not a technical rule peculiar to English statutory interpretation. Rather it represents simple common sense and ordinary usage.'

13. It was submitted that it therefore follows that the general rule 11(5) does not apply to appeals covered by the specialist particular Rule 11(4A) i.e. appeals coming under s.29(1) of the *Law*.
14. In the premises, the Respondent concludes that leave to appeal in this matter can only be granted by the Court of Appeal itself, not the Grand Court.

Preliminary Point (2): Can a Grand Court Judge sitting as a Single Judge of the Court of appeal grant leave to appeal in the circumstances?

15. On this point the Respondent submits that section 33 of the *Law* is the relevant section that provides that a Grand Court Judge may exercise any of the powers exercisable by a single Judge of the Court of Appeal. In respect of civil cases section 31(2) provides:

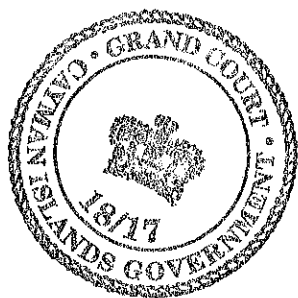
"Any jurisdiction exercisable in any proceedings incidental to any civil case and not involving the hearing or determination of an appeal may, so far as may be prescribed by rules of court, be exercised by a single Judge in the same manner as it may be exercised by the Court and subject to the same provisions."

16. The Respondent submits that this application for leave to appeal does not fall within section 31(2) because it involves a hearing (which term, he asserts, is not limited to a

hearing ‘*on the merits*’), and because the issue of leave is integral rather than incidental to the proceedings. Further or alternatively the Respondent submits that the application involves the final determination of the matter if leave is denied.

17. Further or alternatively Mr. Smith submits that the single judge’s jurisdiction is only exercisable “*so far as may be prescribed by rules of court*”, so in this case the *Rules*. The general powers afforded to a single judge are set out in Rule 24 and these do not include the determination of leave applications as these are not interlocutory matters. Reference was made to *Gilbert v Endean* (1875) 9 Ch D 259 at 268-269 CA, per Cotton LJ who said:

“Those applications only are considered interlocutory which do not decide the rights of parties, but are made for the purpose of keeping things in the status quo till the rights can be decided, or for the purpose of obtaining some direction of the Court as to how the cause is to be conducted, as to what is to be done in the progress of the cause for the purpose of enabling the Court ultimately to decide upon the rights of the parties.”

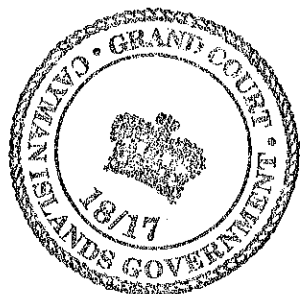


18. He further submits on this point that had the Rules Committee wished to allow a single judge to determine any leave application, it was of course open to that Committee to state this unambiguously in Rule 24, as they did in Rules 15A(2) and 21A(2) in respect of the particular circumstances to which those Rules apply.
19. In conclusion, the Respondent submits that this leave application may not be heard by a single judge of the Court of Appeal under section 31(2) and therefore may not be heard by a Grand Court judge sitting as a single judge of the Court of Appeal.
20. The Respondent avers that applications for leave to appeal out of time pursuant to Rule 11(6) on the other hand can be heard by a Grand Court Judge sitting as a single Judge of the Court of Appeal. However, the argument continues, that if the decision is made to grant leave to appeal out of time, the issue of leave to appeal itself would still then have to be considered by the Court of Appeal. Mr. Smith concludes that any other interpretation would lead to an absurdity whereby applications for leave to appeal filed in

time must be considered by a full Court of Appeal, but applications filed out of time could be heard by a Grand Court Judge sitting as a single Judge of the Court of Appeal.

The Applicant's Arguments in Response to Preliminary Point (1): Can the Grand Court grant Leave to Appeal in respect of a judgment given in exercise of its appellate jurisdiction?

21. Mr. David, who appears for the Applicant, has taken a number of positions in response to the Preliminary Points raised by the Respondent. However, at the end of the day, as I understand it, the Applicant's position is that the Application for Leave to appeal is properly before me as a Judge of the Grand Court, of the "court below", pursuant to Rule (11)(5). That Rule provides as follows:



"(5). In any case in which leave to appeal is required, an application shall be made to the court below:-

- (a) At the time the judgment or order is pronounced; or*
- (b) By summons or motion issued within fourteen days from the date on which the judgment or order is filed."*

22. Mr. David also submitted that regard must be had to the *Law and Rules* as a whole, and in their proper context, and he emphasized that the words used in Rule 11(5) are "*In any case in which leave is required*".
23. Reference was made by Mr. David to two local cases where he opines that Rule 11(4A) was involved, but the point taken here was not taken. These were both decisions of Chief Justice Smellie: *Panier S.A. v Burns* [2001 CILR Note 27], and *Streeter and K Coast Development v. Immigration Board and Governor-in-Council* [1999 CILR 246].

The Applicant's Arguments in response to Preliminary Point (2): Can a Grand Court Judge sitting as a Single Judge of the Court of Appeal grant leave to appeal in the circumstances?

24. On this point, Mr. David submitted that in the event that the Court were to decide that the application for leave to appeal has to be made to the Court of Appeal, a single Judge of Appeal has the power and authority pursuant to Section 33 of the *Law*, to grant leave to appeal.
25. It was further argued that the application for leave to appeal does not involve “*the hearing or determination of an appeal*”, and therefore is not caught by the limitations under section 31(2) of the *Law*.
26. Mr. David also submitted that Rule 24 does not assist in analyzing what the powers of a single Judge would be in this case since that Rule is concerned with the situation where there is already an appeal pending before the Court of Appeal, whereas we are here concerned with the question of leave to bring an appeal.

Discussion and Analysis

27. Neither Counsel was aware of, (and therefore did not bring to my attention), any previous decision relevant to these preliminary points. Both urged, that, whilst these are somewhat technical points, they are important, and that some guidance from the Court would be helpful.
28. I think it would be useful for me to first set out for consideration together, the sections of the *Law* and the *Rules* which are most relevant to this analysis. Seeing the provisions in context is in my view always helpful, indeed, necessary.
29. Sections 2, 6, 29, 31, 33, so far as relevant, provide as follows:

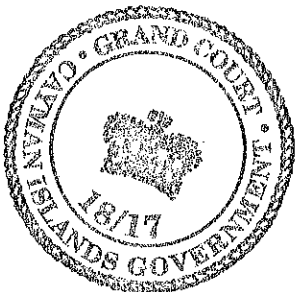
“2. *In this Law-*

“*Court*” means the Cayman Islands Court of Appeal

....

6. *Restrictions on civil appeals*

No appeal shall lie-



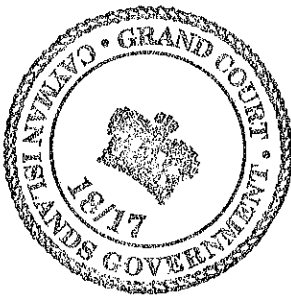
- (a) from any order allowing an extension of time for appealing from a judgment;
- (b) from an order of a judge of the Grand Court giving unconditional leave to defend an action;
- (c) from a decision of the Grand Court in respect of which it is provided by any law in force in the Islands that such decision is final;
- (d) from any order absolute for the dissolution or nullity of marriage in favour of any party who, having had time an opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point which would not have been available to such party on such appeal;
- (e) without the leave of the Grand Court, or of the Court, from an order made with the consent of the parties or as to costs only where costs are by law left to the discretion of the Grand Court;
- (f) without the leave of the Grand Court, or of the Court, from an interlocutory judgment made or given by the Judge of the Grand Court except-
 - (i) where the liberty of the subject or the custody of an infant is in question;
 - (ii) where an injunction or the appointment of a receiver is granted or refused;
 - (iii) in the case of a decree nisi in a matrimonial cause or a judgment in an Admiralty action determining liability;
 - (iv) in the case of an order made in any arbitration proceedings; or
 - (v) in the case of a decision determining the claim of any creditor, the liability of any contributory or the liability of any director or officer of any company, under any law for the time being in force relating to companies, in respect of misfeasance or otherwise;
- (g) in any case in which, before the decision of the Grand Court, the parties have agreed in writing that such decision shall be final;
- (h) in such other cases as may be prescribed by rules of court as, in the opinion of the authority having power to make such rules, are of the nature of final decisions.



.....

29. Further appeals

(1) Any person, including the prosecutor, aggrieved by any judgment given or made by the Grand Court in the exercise of its appellate or revisional jurisdiction, whether such judgment has been given or made upon appeal or revision from a court of summary jurisdiction or any other court, board committee or authority exercising judicial powers, and whether or not the proceedings are civil or criminal in nature, may appeal, subject to this Law, to the Court on any ground of appeal which involves a point of law alone, or against sentence but not upon any question of fact.



.....

Part V –Miscellaneous

Powers which may be exercised by a single Judge

31.....

(2) Any jurisdiction exercisable in any proceedings incidental to any civil case and not involving the hearing or determination of an appeal may, so far as may be prescribed by rules of court, be exercised by a single Judge in the same manner as it may be exercised by the Court and subject to the same provisions.

.....

Powers exercisable by a Judge of the Grand Court

33. All the powers conferred by this Law, any other law or rules of court on a single Judge may, for all purposes, be exercised by a judge of the Grand Court in the same manner as they may be exercised by a single Judge and subject to the same provisions and such exercise shall, for all purposes, be as valid as if that power had been exercised by a single Judge: provided that, on the application of a party aggrieved by it, the Court, as duly constituted for the hearing and determination of appeals under this Law, may review and discharge or vary any

exercise of any such powers by a judge of the Grand Court under this section.”

(My emphasis)

30. Rules 11, 15A, 21, 21A, and 24 of the **Rules**, so far as relevant, provide as follows:

“Part II-Civil Appeals

Notice of appeal

11.(1) *An appeal to the Court of Appeal shall be in Civil Form 1.*

(2) *Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below.*

.....

(4A) *In addition to those cases specified as requiring leave to appeal in paragraphs (e) and (f) of section 6 of the Court of Appeal Law, leave of the Court shall be required for an appeal under section 29(1) of that Law from any decision of the Grand Court in the exercise of its appellate jurisdiction in civil proceedings except where the liberty of the subject or the custody of an infant is in question.*

(4B) *In a case falling within sub-rule (4A) leave to appeal shall not be granted unless the appeal involves a point of law alone and –*

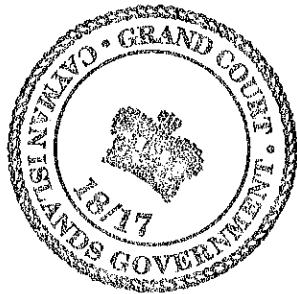
(a) *The appeal would raise an important point of principle or practice; or*

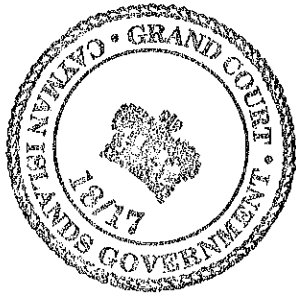
(b) *There is some other compelling reason why a second appeal should be heard by the Court.*

(5) *In any case in which leave to appeal is required, an application for leave shall be made to the court below-*

(a) *at the time the judgment or order is pronounced; or*

(b) *by summons or motion issued within fourteen days from the date on which the judgment or order is filed,*





And if leave is granted, the appellant's notice of appeal shall be lodged within fourteen days of the date upon which the order giving leave to appeal is made.

- (6) *An application for leave to appeal out of time shall be made by summons or motion to a single Judge.*

...

15A Summary determination of requirement for leave to appeal...

- (2) *An objection to the hearing of an appeal to which rule 15(1A) applies shall, unless otherwise ordered by the Court or by the President of the Court, be determined in the first instance by a single Judge of the Court without an oral hearing.*

.....

21. Applications to Court

- (1) *Except as otherwise provided by these Rules every application to a single Judge of the Court shall be by motion.*
- (2).....
- (3) *Where an application for leave to appeal has been refused by the court below, an application for such leave shall be made to the Court **ex parte** within seven days from the date of such refusal.*
- (3A) *Where an **ex parte** application for leave to appeal is made to the Court, it shall be made and determined in accordance with the provisions of Rule 21A.*
- (4) *Wherever, under the Law or these Rules, an application may be made either to the court below or to the Court, it shall be made in the first instance to the court below.*

21A. Ex Parte Application for leave to appeal

.....

- (2) *An **ex parte** application for leave to appeal shall, unless otherwise ordered by the Court or the president of the Court, be determined*

in the first instance by a single Judge of the Court without an oral hearing.

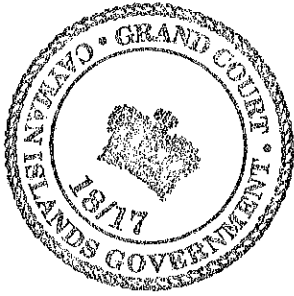
.....

24. Application to single Judge

(1) In any case or matter pending before the Court, a single Judge may, upon application, make an order for-

- (a) a stay of execution of any judgment appealed from pending the determination of such appeal;
- (b) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;
- (c) extension of time, or
- (d) The initial *ex parte* application for leave to appeal required by rule 21(3A), and may hear, determine and make an order on any other interlocutory application."

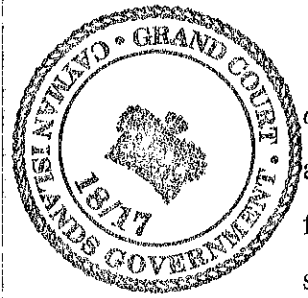
(My emphasis)



Re: Preliminary Point (1): Can the Grand Court grant Leave to Appeal in respect of a judgment given in exercise of its appellate jurisdiction?

31. It is well settled and understood that in construing statutory provisions, the starting point is the ordinary and natural meaning of the words used. It is also plain that statutory provisions must be construed in their context and that the Court must have regard to the statutory purpose of the legislation as a whole as well as of the particular provisions. The Court's duty is to arrive at the legal meaning of the relevant provisions, in accordance with the rules and principles which govern statutory interpretation, as discussed in works such as *Bennion*.

32. In my view, it is plain that section 29(1) would apply to the instant case albeit that the term "*tribunal*" is not used. This would apply either based upon the *ejusdem generis* rule, with the Immigration Appeals Tribunal falling under the umbrella of the words "*or any*



other court, board committee or authority exercising judicial powers", or alternatively, as argued by Mr. Smith, the presumption against absurdity applies, such that all appeals from a decision of the Grand Court exercising its appellate or revisional jurisdiction should be interpreted as falling within section 29(1). Although obviously not capable of being determinative of a preliminary legal point, I note that in any event, Mr. David appears to have conceded the applicability of this section to the instant case.

33. In my judgment, it is important to observe that the *Law* does not address the question of whether leave of the Court is required in relation to section 29(1) appeals. Section 29(1) has to do with the appeal itself. It is the *Rules*, Rule 11, that addresses the issue.
34. It is to be noted that paragraphs (e) and (f) of section 6 of the *Law* require leave to appeal either of the Grand Court, or of the Court of Appeal. However, Rule 11(4A), in addressing appeals under section 29(1), speaks solely of leave of the Court of Appeal.
35. In my judgment, Rules 11(4A) and 11(4B), are not in fact addressing anything but appeals, and the question of leave of the Court of Appeal, in relation to appeals under section 29(1) of the *Law*. Therefore, the cases cited by Mr. David, i.e. *Panier S.A. v Burns*, and *Streeter* are wholly irrelevant to this issue, since they were not concerned with appeals from the Grand Court's exercise of its appellate jurisdiction.
36. I am of the view that Rule 11(4B), when carefully read, is only concerned with the question of leave to appeal in relation to appeals under section 29(1), and not in relation to leave to appeal under paragraphs (e) and (f) of section 6 of the *Law*. The subject matter of paragraphs (e) and (f) do not involve cases where the Grand Court is exercising appellate jurisdiction, and therefore the condition at sub-paragraph 11(4B)(b) i.e. that "*there is some other compelling reason why a second appeal should be heard by the Court*" cannot be interpreted as applying to anything but a consideration of leave in relation to appeals under section 29(1) of the *Law*. Accordingly, there are therefore two sub-sections of Rule 11 specifically and in particular addressed to leave to appeal in relation to appeals pursuant to section 29(1) of the *Law*.

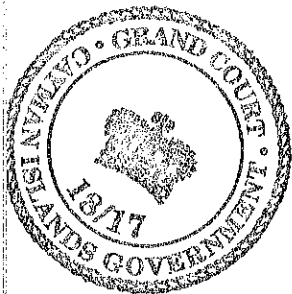
37. In my judgment, the principle of *generalibus specialia derogant* applies here. This was well-articulated by Sir John Romilly M.R. in *Pretty v Solly* referred to in the Respondent's submissions above.

38. Thus, in my view, Rules 11(4A) and 11(4B) which specifically address the matter of leave to appeal in relation to Section 29(1) appeals, are the operative sections of the *Rules* in respect of this application by HS. Rule 11(5) is a general provision, and in my view, although its opening words are "*In any case in which leave is required*" it must be taken as affecting only the other types of situations other than section 29(1) appeals, addressed under the *Law* and *Rules*, where leave to appeal is required, for example under paragraphs (e) and (f) of section 6 of the *Law*.

39. It seems plain to me that the statutory purpose of the *Law* and *Rules* is to keep a check on further appeals after the exercise by the Grand Court of its appellate jurisdiction. The policy behind this would seem to be that the Court of Appeal will decide, and is best placed to decide, whether the appeal, (which has to be solely on a point of law), raises an important point of principle or practice, or there is some other compelling reason why a second appeal should be heard by the Court. That concept is conveyed to some small extent, by the language in Rule 11(4A) which states that "*leave of the Court shall be required for an appeal under section 29(1)*", in contrast to simply "*leave to appeal*" in relation to paragraphs (e) and (f) of paragraph 6 of the *Law*.

40. It follows that, whilst in my view the point is not an easy one, the first Preliminary Point succeeds, and I rule that an application for leave to appeal in respect of proposed appeals pursuant to section 29(1) of the *Law* must be filed in the Court of Appeal, and the Grand Court has no power or jurisdiction to grant leave to appeal in the circumstances of this case.

Re: Preliminary Point 2: Can a Grand Court Judge sitting as a Single Judge of the Court of Appeal grant leave to appeal in the circumstances?

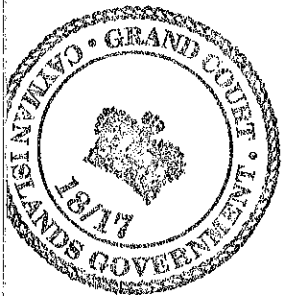


41. There was some confusion in the arguments on this issue. For the avoidance of doubt I wish to make clear that I am resolving this issue strictly as a matter of Law, the issue having been raised as a Preliminary Point before me as a Grand Court Judge. I cannot in this particular application, which is filed solely in the Grand Court, be exercising, or be taken to be exercising any authority as a single Judge of the Court of Appeal. There is no straddling of the two jurisdictions in the one application. Thus, even if I come to the view that a single Judge of appeal can deal with the application to the Court of Appeal, and that a Grand Court Judge can, pursuant to section 33 of the *Law*, grant the leave to appeal, I could not now wear that hat in this application, because it has not been filed in the Court of Appeal and therefore section 33 of the *Law* does not, in my view, apply in respect of the instant application.

42. It is important to recognise that the Court of Appeal is a creature of Statute, and unlike the Grand Court it does not have inherent jurisdiction. It is therefore important to have regard to any relevant legislation, including the *Law* and the *Rules* that delineate the authority of the Court of Appeal, and even more so, the authority of a single Judge of Appeal.

43. In my judgment, the argument advanced by the Respondent to the effect that the application for leave to appeal is a hearing within the meaning of Section 31(2) of the *Law* is wholly fallacious. Section 31(2) provides, amongst other matters, that a single Judge of the Court of Appeal has no power to deal with the hearing or determination of an appeal, not that a single Judge cannot deal with a hearing per se. The application for leave to appeal is plainly not the hearing of an appeal.

44. In my judgment, an application for leave to appeal pursuant to Rule 11(4A) falls to be considered an interlocutory application. Rule 24 does speak to matters "*pending before the Court*". However, included amongst the matters in respect of which a single Judge may make an order is the order at sub-paragraph (d), i.e. "*the initial ex parte application for leave to appeal required by Rule 21(3A)*". The section goes on to say that the single Judge may "*hear, determine and make an order on any other interlocutory application.*"



45. In my judgment, the plain and ordinary meaning of Rule 24 is that the ex parte application for leave to appeal under Rule 21(3A), is treated as being in respect of a case or matter pending before the Court, and is also treated as an interlocutory application. It therefore seems to me, by operation of the *ejusdem generis* rule that an application for leave to appeal pursuant to Rule 11 (4A) would also fall to be considered an interlocutory application, and would therefore fall within the authority of the single Judge to “hear, determine and make an order on any other interlocutory application”. Indeed, the quote from *Gilbert v Endean* cited by Mr. Smith, rather than detracting from this interpretation, supports my characterization of the instant application.

46. In my judgment, the application for leave pursuant to Rule 11(4A) is incidental to a civil case, and does not involve the hearing or determination of an appeal, and is within the provisions as prescribed by Rules of Court. It therefore falls well within the powers that may be exercised by a single Judge as described in section 31(2) of the *Law* and within Rule 24 of the *Rules*. Pursuant to section 33 of the *Law*, in respect of an application filed in the Court of Appeal, a Grand Court Judge could exercise the powers of a single Judge and hear an application under Rule 11(4A) for leave to appeal.

47. The second Preliminary Point in my judgment therefore fails.

48. However, the application on behalf of HS will now have to be pursued by filing the relevant application in the Court of Appeal. I respectfully say it would then be for listing by that Court’s Registry as is seen fit.

Comment on related applications

49. There are related applications, notably, the applications of YJ, YD and MT which were filed in the Court of Appeal, and not in the Grand Court, in which those applicants seek leave to appeal out of time.

50. I wish to make clear at the outset that I agreed that these applications could be listed for hearing before me sitting as a single Judge of the Court of Appeal, although I am the



Judge who heard the substantive appeal that it is being sought to appeal from. I did so simply in the interests of assisting the parties with an early date, and at the applicants' request for a date, there being no objection taken to me sitting in that dual capacity. However, my agreement to deal with these applications occurred prior to these preliminary points being taken, I have now therefore taken a different view of my ability to hear or determine those matters in all of the circumstances and will so advise the parties within those applications.



**THE HON. JUSTICE INGRID MANGATAL
JUDGE OF THE GRAND COURT**

