

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

**TERRITORY OF THE VIRGIN ISLANDS**

**BVIHCMAP2025/0003**

**BETWEEN:**

[1] LAU MAN SANG, JAMES  
[2] LUNG HUNG CHEUK  
[3] CHEUNG WING SUM, ALBERT  
[4] NGAI HIN KWAN, ALBERT  
[5] YEUNG YIU CHONG  
[6] ZHANG GUO WEI

Applicants

and

[1] KING BUN LIMITED  
[2] KENCY LIMITED  
[3] KAR KWONG DEVELOPMENT LIMITED (TRADING AS  
KAI KWONG TRADING COMPANY)  
[4] KHI CAPITAL LIMITED  
[5] KENTRUE COMPANY LIMITED  
[6] HUI PAK KONG  
(Suing in the name and on behalf of themselves and  
all other shareholders in Vanway International Group  
Limited, except the First and Second Appellants)  
[7] CHAU CHEUK WAH, ANGUS  
[8] VANWAY INTERNATIONAL GROUP LIMITED

Respondents

**Before:**

The Hon. Mde. Margaret Price Findlay  
The Hon. Mde. Paula Gilford  
The Hon. Mr. Brian Cottle

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

**Appearances:**

Mr. David Quest, KC for the Applicants  
Mr. Jern-Fei Ng, KC with him Mr. Jerry Samuel, Dr. Alecia Johns and Mr. James  
Bailey for the 1<sup>st</sup> – 6<sup>th</sup> Respondents

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2026: June 2;  
September 23.

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*Application for conditional leave to appeal to His Majesty in Council – Application to amend notice of motion for leave – Section 3(2)(a) of the Virgin Islands (Appeals to Privy Council) Order – Rules 39.5, 63.6 and 63.7 of the Civil Procedure Rules 2000 – Whether proposed appeal raises question of great general or public importance or otherwise – Whether failure by legal practitioners to comply with mandatory personal service requirements when coming off the record constitutes good reason for former clients' non-attendance at trial – Whether proposed question genuinely arises from manner in which case decided – Whether question merely concerns application of settled law to particular facts and exercise of judicial discretion – Whether leave ought to be granted*

In 2017, the first to fifth and seventh respondents commenced a derivative action against the applicants in the Commercial Division of the High Court of Justice in the Territory of the Virgin Islands. A case management order directed that liability be determined at trial and that the question of relief be stood over for the direction of the trial judge. By judgment dated 11<sup>th</sup> August 2021 and order dated 5<sup>th</sup> October 2021, the claim against the applicants succeeded. The applicants' appeal against the liability judgment was dismissed on 7<sup>th</sup> July 2023.

The Registrar of the High Court subsequently notified the parties that the quantum trial would be held on 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> and 22<sup>nd</sup> November 2023. The parties' legal practitioners acknowledged receipt of the notice. On 30<sup>th</sup> October 2023, the applicants' legal practitioners, Kendall Law, applied for permission to come off the record on the basis that their relationship with the applicants had broken down irretrievably. The learned judge granted the application. The applicants had appointed Mr. Lock as their litigation manager to coordinate the proceedings and to communicate with Kendall Law on their behalf. The application and the order permitting Kendall Law to come off the record were served on the applicants by email to Mr. Lock.

At the quantum trial on 14<sup>th</sup> November 2023, no appearance was made on behalf of the applicants and the trial proceeded in their absence. The learned judge ordered the applicants to pay the respondents equitable compensation in the sum of US\$55,730,000.00 and pre-judgment interest in the sum of US\$41,144,556.37, together with post-judgment interest. The applicants applied to set aside the judgment and order. The learned judge determined that, under rule 39.5 of the Civil Procedure Rules 2000, the applicants were required to demonstrate that they had failed to attend the hearing for good reason and that it was likely that some other order might have been made had they attended. Although the latter requirement was satisfied, the applicants had not demonstrated good reason for their non-attendance. The learned judge accordingly dismissed the application.

Being dissatisfied with the learned judge's decision, the applicants appealed. On 30<sup>th</sup> January 2026, the Court of Appeal dismissed the appeal. The Court found that the applicants had not addressed the primary reason for the learned judge's conclusion that no good reason had been shown, namely, the total inaction and complete silence on the part of the applicants and their litigation manager in the period leading up to the quantum trial. The Court also found that Kendall Law had sent the application to come off the record and the resulting order to Mr. Lock and that the application was therefore on notice to the applicants.

Thereafter the applicants filed the current notice of motion seeking leave to appeal to His Majesty in Council pursuant to section 3(2)(a) of the **Virgin Islands (Appeals to Privy Council) Order**. The applicants contended that the proposed appeal raised a question of law which had not been authoritatively determined, namely, whether, on the proper construction of rules 39.5 and 63.6, a legal practitioner's failure to comply with the mandatory personal service requirements when coming off the record, which leaves the client unknowingly without representation, constitutes in and of itself a good reason for the client's non-attendance at trial. The applicants argued that the answer to this question would affect every litigant in the Eastern Caribbean who engages legal representation and was therefore a matter of great general or public importance.

The notice of motion and draft grounds of appeal relied on the **Civil Procedure Rules (Revised Edition) 2023**, although the quantum trial had been fixed before those rules came into force and the **Civil Procedure Rules 2000** were applicable. The respondents opposed the application on the grounds that the proposed question did not genuinely arise from the way in which the case had been decided, that the good reason threshold required an assessment of all the circumstances and that the application merely concerned the application of settled law to the particular facts. The applicants subsequently applied to amend the notice of motion and draft grounds to address the applicable rules. At the hearing, the applicants accepted that the **Civil Procedure Rules 2000** applied and pursued the ground that Kendall Law's failure to comply with the personal service requirements necessarily constituted good reason for their non-attendance. The issue which arose for determination was therefore whether the proposed appeal raised a question of great general or public importance or otherwise which, in the opinion of the Court, ought to be submitted to His Majesty in Council for determination.

**Held:** granting the application to amend the notice of motion for leave to appeal; dismissing the notice of motion for leave to appeal to the Judicial Committee of the Privy Council; and ordering the applicants to bear the costs of the leave application, to be assessed by a master or judge of the Commercial Division of the High Court unless agreed within 21 days of the date of the judgment, that:

1. In furtherance of the overriding objective of the CPR, the application for permission to amend the notice of motion for leave to appeal was granted, as the amendment merely sought to rely on the provisions of the **Civil Procedure Rules 2000** instead of the **Civil Procedure Rules (Revised Edition) 2023**. Additionally, the amendment did not extend the initial application, was filed in a timely manner and was not opposed by the respondents.

Rule 1.1 of the **Civil Procedure Rules (Revised Edition) 2023** applied.

2. Section 3(2)(a) of the **Virgin Islands (Appeals to Privy Council) Order** provides that an appeal shall lie from a decision of the Court of Appeal in civil proceedings where, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council. Leave is usually granted where there is a

difficult question of law. In determining whether a matter is one of great general or public importance, the Court usually looks for a really serious issue of law, an unsettled constitutional provision, an area of law in dispute, or a legal question whose resolution poses dire consequences to the public. Where there is no genuine dispute concerning the applicable principles of law, such a question does not ordinarily arise, especially where the principle has been settled by the highest appellate court or by longevity of application. Conversely, a principle which is unsettled, is the subject of differing views or conflicting dicta, is far-reaching in effect, is productive of harsh consequences, or would otherwise benefit from consideration at the final appellate level may warrant leave. Where, however, the real question is the way in which settled and clear law was applied to the particular facts, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted. Further, the proposed question must arise from the way in which the case was decided by the Court of Appeal and must be involved in the proposed appeal.

Section 3(2)(a) of the **Virgin Islands (Appeals to Privy Council) Order** Statutory Instrument No. 234 of 1967 applied; **Martinus Francois v The Attorney General** SLUHCVP2003/0037 (delivered 7<sup>th</sup> June 2004, unreported) followed; **Renaissance Ventures Ltd et al v Comodo Holdings Ltd** BVIHCP2018/0005 (delivered 8<sup>th</sup> October 2018, unreported) followed.

3. The critical question is whether the application raises a genuinely disputable issue of law of great general or public importance or otherwise. In the case at bar, the applicants engaged Mr. Lock as their litigation manager and sole point of contact with Kendall Law. They were content throughout the proceedings in the court below to give instructions to and receive communications from Kendall Law through Mr. Lock. The learned judge and the Court of Appeal found that the application to come off the record and the resulting order were on notice to the applicants. In those circumstances, the applicants could not complain about a lack of personal service under rule 63.6 when they had chosen to communicate with their legal practitioners through an intermediary. The position may have been different had Kendall Law not served the application and order on Mr. Lock, which was the parties' agreed mode of communication. The allegedly novel question did not concern a really serious issue of law, an unsettled constitutional provision, an area of law in dispute or a legal question whose resolution posed dire consequences to the public. It did not raise a genuinely disputable and substantial issue requiring resolution for the future guidance of the courts or the public, nor did it disclose conflicting decisions of the Court of Appeal requiring guidance from the Privy Council. The applicants were aggrieved by the way in which the learned judge had exercised his discretion in considering the set aside application and by the Court of Appeal's concurrence with that exercise. While the question may have been of great importance to the applicants, that did not, without more, make it one of great general or public importance. The proposed question was in reality a private dispute concerning the applicants' communication with their legal practitioners through an intermediary and the routing of email correspondence to that intermediary's junk email folder. The requirements for leave under section 3(2)(a) were therefore not satisfied.

Rules 39.5, 63.6 and 63.7 of the **Civil Procedure Rules 2000** applied; **Caldicott Worldwide Ltd v Siong Beng Seng et al** BVIHCMAP2023/0009 (delivered 17<sup>th</sup> October 2025, unreported) followed; **Emmerson International Corporation v Renova Holdings Limited** BVIHCMAP2019/0001 (delivered 7<sup>th</sup> July 2023, unreported) followed; **Golden Meditech Stem Cells (BVI) Company Limited v Blue Ocean Creation Investment Hong Kong Ltd et al** BVIHCMAP2023/0022 (delivered 12<sup>th</sup> February 2026, unreported) followed.

## JUDGMENT

- [1] **PRICE FINDLAY CJ:** The applicants, by notice of application filed on 20<sup>th</sup> February 2026, are seeking leave to appeal the judgment and orders of this Court dated 30<sup>th</sup> January 2026 in BVIHCMAP2025/0003 to His Majesty in Council pursuant to section 3(2)(a) of the **Virgin Islands (Appeals to Privy Council) Order** (the “**BVI Order**”).<sup>1</sup>
- [2] This Court dismissed the applicant’s appeal against the *ex-tempore* judgment and order of a learned judge in the Commercial Division of the High Court of Justice in the Territory of the Virgin Islands (“BVI”) made on 30<sup>th</sup> April 2024. That appeal originated after the learned judge dismissed the applicant’s application to set aside an order which he made in their absence on 14<sup>th</sup> November 2023 at the conclusion of a trial on quantum. Under the earlier order, the applicant was required to pay the respondents equitable compensation and pre-judgment interest amounting in total to approximately US\$97 million.

### Background

- [3] The genesis of the dispute between the parties lies in a derivative action that was brought by the 1<sup>st</sup>– 5<sup>th</sup> and 7<sup>th</sup> respondents against the applicants in the Commercial Court of the High Court of the BVI in 2017. A case management conference order dated 19<sup>th</sup> November 2018 directed that the liability issue be determined at trial and the question of relief be stood over for direction of the trial judge. The liability trial was held in 2019. By judgment dated 11<sup>th</sup> August 2021 and liability order dated 5<sup>th</sup>

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<sup>1</sup> Statutory Instrument No. 234 of 1967.

October 2021, it was held that the claim against the applicants succeeded. The applicants' appeal against the liability judgment was dismissed on 7<sup>th</sup> July 2023.

- [4] In a notice dated 7<sup>th</sup> June 2023 the Registrar of the BVI High Court notified the parties that the quantum trial had been scheduled for hearing on 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> and 22<sup>nd</sup> November 2023. Counsel for the applicants (Kendall Law) and counsel for the respondents (Conyers), both acknowledged receipt of the notification via email on 8<sup>th</sup> June 2023.
- [5] On 30<sup>th</sup> October 2023 Kendall Law filed a notice of application for permission to come off the record as legal practitioners for the 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> applicants (defendants in the claim). The basis for that application was that the relationship between Kendall Law and the said defendants had broken down irretrievably, no purpose was served by Kendall Law remaining on the record for them, and the application would be duly served personally on the defendants once filed. The removal application was heard by the learned judge and granted. The order was served on the applicants via email to Mr. Lock.<sup>2</sup>
- [6] At the Quantum Trial held on 14<sup>th</sup> November 2023, as modified by a further directions order made on 7<sup>th</sup> November 2023, no appearance was made or entered for or on behalf of the 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> applicants. The trial proceeded in their absence. The learned judge found the 1<sup>st</sup> to 7<sup>th</sup> applicants jointly and severally liable to pay equitable compensation in the sum of US\$55,730,000 and the 1<sup>st</sup> to 7<sup>th</sup> applicants' jointly and severally liable to pay pre-judgment interest on the equitable compensation from the valuation date of 15<sup>th</sup> September 2015 to the date of that order at a rate of 7% per annum (compounded annually) in the total sum of US\$41,144,556.37. He also ordered post-judgment interest at the rate of 5% per annum to run on the equitable compensation from the date of the order until the date of payment.

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<sup>2</sup> Mr. Lock was appointed by the applicants to coordinate the proceedings on their behalf and was the one in direct communication with their legal practitioners Kendall Law.

- [7] The applicants were aggrieved by this decision and filed an application for the learned judge to set it aside on 11<sup>th</sup> December 2023. Among the grounds of that application were (i) whether the judge erred in adopting an overly rigorous assessment of whether the applicants had good reason not to attend the quantum trial leading to a contortion of the plain language of Mr. Lock's evidence; (ii) whether the judge misunderstood the reasons being advanced by the applicants, as collectively, their good reason for not attending the Quantum Trial; and (iii) whether the judge failed to consider the applicants' arguments in respect of Kendall's failure to personally serve notice of their application to come off the record and/or the High Court's order permitting them to do so, in breach of CPR 63.6.
- [8] The learned judge heard that application on 30<sup>th</sup> April 2024 and determined that the high court had jurisdiction under CPR 39.5 to set aside an order or judgment made in a party's absence if that party could demonstrate that (i) they failed to attend the hearing for 'good reason'; and (ii) it is likely that, had they attended, some other order might have been made. His Lordship concluded that had the applicants attended the Quantum Trial, it was likely that the court might have made some other order; however, the applicants had not demonstrated that they failed to attend the Quantum Trial for 'good reason'. His Lordship therefore ordered that the set aside application be dismissed; that the applicants pay the respondents' costs of the set aside application to be assessed if not agreed within 21 days; and the applicants make an interim payment to the respondents on account of their costs of the set aside application in the sum of US\$173,500.00 within 14 days.
- [9] Being dissatisfied with this decision, the applicants sought leave from the learned judge to appeal to the Court of Appeal. With leave from the learned judge granted on 10<sup>th</sup> January 2025, the applicants filed a notice of interlocutory appeal on 25<sup>th</sup> February 2025 seeking relief that the order dated 14<sup>th</sup> November 2023 be set aside with costs to the applicants; a re-trial be ordered; and that any such re-trial take place before a different judge of the high court.

[10] The appeal was heard on 17<sup>th</sup> June 2025. On 30<sup>th</sup> January 2026 this Court dismissed the application to set aside the *ex-tempore* judgment and order of the court below dated 14<sup>th</sup> November 2023; ordered the applicants to pay the respondents' costs of the set aside application, to be assessed if not agreed within 21 days; and ordered the applicants to make an interim payment to the respondents on account of their costs of the set aside application in the sum of US\$173,500.00 within 14 days. This Court found that the appellants did not address the primary reason on which the learned judge found that there was no good reason shown to set aside the order, and that there had been total inaction and complete silence on the appellants' and their litigation manager's part leading up to the Quantum Trial. This Court also found that Kendall Law did send a copy of the removal notice to the appellants' litigation manager, Mr. Lock, on 6<sup>th</sup> November 2023 and the removal order which was subsequently granted; thus, the application was 'on notice' to the appellants in compliance with CPR 63.6(2).

**Notice of Motion for Leave to Appeal to His Majesty in Council**

[11] Being aggrieved with this Court's decision, the present Notice of Motion for Leave to Appeal to The Judicial Committee of the Privy Council was filed on 20<sup>th</sup> February 2026. The basis of the applicants' dissatisfaction is that this Court: 'erred in law in failing to hold that, on the proper construction of CPR 39.5 and CPR 63.6, a legal practitioner's failure to comply with the mandatory personal service requirements of CPR 63.6 when coming off the record, which leaves the client unknowingly without representation, constitutes in and of itself a "good reason" for that client's non-attendance at trial within the meaning of CPR 39.5(5)(a)(i)'.<sup>3</sup>

[12] The applicants submit that this appeal raises a question of law which has not been authoritatively determined by the Judicial Committee or by this Court. That question is, whether, on the proper construction of CPR 39.5 and 63.6, a legal practitioner's failure to comply with the mandatory personal service requirements of CPR 63.6

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<sup>3</sup> Draft Grounds of Appeal filed on 20<sup>th</sup> February 2026 at paragraph 4.

when coming off the record, which leaves the client unknowingly without representation, constitutes in and of itself a 'good reason' for that client's non-attendance at trial within the meaning of CPR 39.5(5)(a)(i). The answer to this question, the applicants argue, affects every litigant in the Eastern Caribbean who engages legal representation and has implications for the proper administration of justice throughout the region. Thus, this appeal is a matter of great general or public importance contemplated by section 3(2)(a) of the **BVI Order**.<sup>4</sup>

[13] The applicants also contend that CPR 63.6's mandatory personal service requirement exists to protect clients by ensuring that a client cannot be prejudiced by a breakdown in communications with their lawyers. Thus, if the CPR treats the practitioner's receipt of notice as the client's receipt of notice (even where the practitioner fails to inform the client) and the practitioner's attendance as the client's attendance, then it must follow that where a practitioner fails to comply with CPR 63.6, and that practitioner then fails to attend trial, the client's consequent non-attendance must constitute a 'good reason' under CPR 39.5(5)(a)(i).<sup>5</sup>

[14] Further, the applicants posit that the Court of Appeal's rejection of this argument raises a question of principle that requires authoritative determination because litigants are entitled to know: (i) whether they can rely upon their lawyers to attend trial on their behalf; and (ii) whether, if their lawyers fail to comply with the mandatory procedural requirements for coming off the record and thereby leave them unknowingly unrepresented (or at risk of that), they will be protected by the 'good reason' threshold in CPR 39.5(5)(a)(i). Additionally, if a legal practitioner's failure to comply with CPR 63.6 does not, without more, constitute a 'good reason' for the client's non-attendance, then the mandatory personal service requirement is rendered nugatory. This, the applicants argue, would be contrary to the public

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<sup>4</sup> Notice of Motion for Leave to Appeal to the Judicial Committee of the Privy Council filed on 20<sup>th</sup> February 2026 at paragraph 3(a).

<sup>5</sup> *ibid* at paragraph 3(c).

interest in the proper administration of justice and the maintenance of professional standards.<sup>6</sup>

[15] Moreover, the applicants argue that this question further engages the fundamental right to a fair hearing since a party cannot meaningfully exercise their right to be heard if they do not know that they are unrepresented and therefore need to take steps to protect their position. It is also one of pure law concerning the proper construction of the CPR and the relationship between its provisions. Thus, leave should be granted because the Judicial Committee is well placed to provide authoritative guidance on this question of principle.<sup>7</sup>

[16] In their notice and draft grounds of appeal, the applicants relied on the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** (“New CPR”) instead of the **Eastern Caribbean Supreme Court Civil Procedure Rules 2000** (“Old CPR”), although the Quantum Trial was fixed before the New CPR came into effect and was held on 14<sup>th</sup> November 2023. The New CPR came into effect on 31<sup>st</sup> July 2023.

### **Respondents’ Opposition to the Notice of Motion**

[17] The respondents filed a notice of opposition to the applicants’ notice of motion for conditional leave to appeal to His Majesty in Council on 26<sup>th</sup> February 2026. In their skeleton argument filed on 15<sup>th</sup> May 2026, the respondents invited this Court to dismiss the application for conditional leave with costs because consistent with the findings of the learned judge, the Court of Appeal held that it was ‘incontrovertible on the evidence’ that there was ‘total silence, inertia, and abject disinterest’ by the applicants in the lead up to the Quantum Trial, and it was this ‘wholly unacceptable and indefensible behaviour on the part of these appellants [that] led to their non-attendance at the Quantum Trial’.<sup>8</sup>

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<sup>6</sup> *ibid* at paragraphs 3(c), (d), and (e).

<sup>7</sup> *ibid* at paragraphs 3(f) and (h).

<sup>8</sup> Judgment dated 30<sup>th</sup> January 2026 at paragraphs 193 to 194.

- [18] The respondents submitted that the applicants' argument that they had good reason for not attending the Quantum Trial, is misconceived because the New CPR has no application in these proceedings. The respondents stated that the Old CPR applies because the case was commenced and the Quantum Trial fixed prior to the commencement of the New CPR according to the transitional provisions in Part 75 thereof. In any event, even if the New CPR did apply, the court must 'determine the true reason why the applicants failed to attend the trial and assess whether, in all the circumstances of the case, this amounts to a good reason'.<sup>9</sup>
- [19] Moreover, the respondents argued that the application should be dismissed because there is no issue of great general or public importance which arises therein. Relying on this Court's decision in **Renaissance Ventures Ltd v Comodo Holdings**,<sup>10</sup> the respondents argued that for leave to appeal to the Privy Council to be granted, the purported question of law must 'genuinely arise' from the way in which the case was decided in the Court of Appeal. But, in this case, the questions which the applicants 'have sought to manufacture plainly did not genuinely arise from the way in which the case was decided in the Courts below and did not form part of their case whatsoever until this point, given that rule 39.5 of the New CPR was not relied on at all'.<sup>11</sup>
- [20] The reality, the respondents stated, is that the applicants are dissatisfied with how this Court applied CPR 39.5 to the circumstances of their case, the fundamental finding being that there was no good reason for their non-attendance at trial and no other exceptional circumstances which justified setting aside the Quantum Trial order. But this dissatisfaction 'does not, without more, create an issue of great or general public importance'.<sup>12</sup>

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<sup>9</sup> First to Sixth Respondent's Skeleton Argument (in opposition to Appellant's Application for Conditional Leave to Appeal) filed on 15<sup>th</sup> May 2026 at paragraphs 2 and 3.

<sup>10</sup> BV/HCMAP2018/0005 (delivered 8<sup>th</sup> October 2018, unreported) at paragraphs 10 and 11.

<sup>11</sup> First to Sixth Respondent's Skeleton Argument (in opposition to Appellant's Application for Conditional Leave to Appeal) filed on 15<sup>th</sup> May 2026 at paragraphs 36 and 37.

<sup>12</sup> *ibid* at paragraph 38.

- [21] The respondents also argued that the applicants attempted to ‘breathe new life into’ ground 6 of the set aside appeal which was rightly rejected by this Court. The true reason for the applicants’ absence at the Quantum Trial, the respondents argued, was because of their ‘wholly unacceptable and indefensible silence, inertia and disinterest in the proceedings’ which was self-evidently not a good reason for failing to attend the trial. It was argued that it would be absurd if the court was ‘bound to conclude’ that the applicants nevertheless met the good reason threshold, merely because their legal practitioners are alleged to have failed to personally serve the order removing them from the record under a distinct procedural rule.<sup>13</sup>
- [22] While the respondents accepted that this Court erred in applying rule 39.5 of the New CPR instead of rule 39.5 of the Old CPR in its 30<sup>th</sup> January 2026 Judgment, they submitted that this did not affect the outcome of the appeal because the Court focused on the good reason threshold which is the same threshold that applies in both CPRs. Thus, had the Old CPR been used, the set aside appeal would have still failed for the same reasons. Furthermore, they stated that the original reason provided for failing to attend the Quantum Trial was that email correspondences from Kendall Law went to Mr. Lock’s junk email so they had not received notice.<sup>14</sup>
- [23] The respondents also argued that contrary to the applicants’ criticisms, the learned judge followed the approach established in **Brazil v Brazil**<sup>15</sup> which is to examine all the evidence, determine the true reason for non-attendance, and assess whether that is a good reason. Moreover, they submitted that the totality of the learned judge’s factual findings was relevant to his and this Court’s conclusion that the applicants had no good reason for failing to attend the Quantum Trial. They argued that the applicants are aware that the Privy Council will not entertain attempts to challenge concurrent findings of fact as held in **Sancus Financial Holdings Ltd.**

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<sup>13</sup> First to Sixth Respondent’s Skeleton Argument (in opposition to Appellant’s Application for Conditional Leave to Appeal) filed on 15<sup>th</sup> May 2026 at paragraphs 39 to 42.

<sup>14</sup> *ibid* at paragraphs 43 to 44.

<sup>15</sup> [2002] EWCA Civ 1135 at paragraph 12.

**and others v Holm and another.**<sup>16</sup> Thus, the argument that the New CPR required the courts below to conclude that the applicants had a good reason for not attending, after evaluating all the evidence and determined that they did not in fact have a good reason, must fail.<sup>17</sup>

#### **Application to Amend Notice of Motion for Leave to Appeal**

- [24] The applicants filed a notice of application for permission to amend the notice of motion for leave to appeal on 22<sup>nd</sup> May 2026 pursuant to the Court's inherent jurisdiction. This was accompanied by the affidavit of Renell Benjamin in support of the application, an amended notice of motion for leave to appeal to the Judicial Committee of the Privy Council, and skeleton arguments which were all filed on 22<sup>nd</sup> May 2026.
- [25] The point raised by the proposed amendments to the notice of motion is that this Court addressed the wrong procedural rules and decided the set aside appeal on an incorrect legal footing. The applicants proposed to amend the notice of motion and draft grounds of appeal to: '(a) add a further ground of appeal concerning the Court of Appeal's use of the New CPR in determining the set aside appeal; (b) to preserve and plead, in the alternative, that even if it is determined that the Court of Appeal should have applied the Old CPR, yet that is not sufficient in and of itself to set aside the judgment, the Court of Appeal erred in failing to give proper effect to the mandatory personal-service requirement under Old CPR rule 63.6 and the public-policy purpose it serves in assessing whether the Appellants had a good reason for non-attendance under Old CPR rule 39.5; and (c) make consequential amendments to the draft materials, including the recitals in the draft Order'.<sup>18</sup>

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<sup>16</sup> [2022] UKPC 41.

<sup>17</sup> First to Sixth Respondent's Skeleton Argument (in opposition to Appellant's Application for Conditional Leave to Appeal) filed on 15<sup>th</sup> May 2026 at paragraphs 45 and 46.

<sup>18</sup> Notice of Application to Amend Notice of Motion for Leave to Appeal to His Majesty In Council filed on 22<sup>nd</sup> May 2026 at paragraphs 3 and 4.

[26] The applicants indicated that while the proposed amendments are limited and necessary because they are prompted by, and respond to, the point of applicable law identified in the respondents' skeleton arguments filed on 15<sup>th</sup> May 2026; they do not abandon the existing ground of appeal as it is preserved and reformulated in the alternative under the Old CPR; they will assist the just and orderly determination of the application for leave to appeal; and they cause no unfair prejudice to the respondents.<sup>19</sup>

[27] The proposed amended grounds of appeal are (i) whether a practitioner's breach of the mandatory personal-service requirements, which leaves the client unknowingly unrepresented, constitutes a good reason for non-attendance; (ii) whether the Court of Appeal erred in law by determining the set aside appeal by reference to the New CPR 39.5 when the applicable procedural code was the Old CPR which are materially different; and (iii) alternatively, whether the Court of Appeal's decision can stand notwithstanding that it applied the New CPR.<sup>20</sup>

[28] The respondents did not file any reply to the application to amend the notice of motion.

### **The Hearing**

[29] At the hearing before this Court on 2<sup>nd</sup> June 2026, learned King's Counsel for the applicants, proposed that the notice of motion for leave and the amended notice of motion could conveniently be dealt with as part of his submissions on the main application. Learned King's Counsel for the respondents agreed that the amendment application could be dealt with in conjunction with the application for leave to appeal. The applications were thus heard together.

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<sup>19</sup> *ibid* at paragraph 5.

<sup>20</sup> Appellant's Skeleton Argument (Application to amend Notice of Motion for Leave to Appeal) at paragraphs 23 to 25.

### **Applicants' Submissions**

- [30] Although several grounds of appeal were filed, only ground 6 was advanced by the applicants at the hearing. Learned King's Counsel, Mr. Quest indicated that the applicants would not pursue ground 2 because if it goes to the Privy Council, they 'can simply decide for themselves'. They did however press ground 3, which is essentially, 'a reformulation of ground 1' to focus it exclusively on rule 39.5 of the Old CPR instead of the New CPR, that Kendall Law's failure to comply with the mandatory personal service regime means that non-attendance ought to have been treated as a good reason and their reliance on the wording of the New CPR 'is now simply that its confirmatory of that general principle'.
- [31] Learned King's Counsel Mr. Quest highlighted a complication in the appeal, being, that although the parties argued the case before the learned judge and Court of Appeal on the Old CPR, the respondents referred to the New CPR in their skeleton submissions and authorities bundle and this Court used the New CPR in its Judgment. Consequently, the applicants 'erroneously' used the New CPR in its application for leave to appeal, draft grounds of appeal and skeleton arguments for this hearing. Mr. Quest KC also submitted that the applicants 'overlooked' the Court of Appeal's error 'and to some extent confounded that error' by drafting their original grounds of appeal by reference to the New CPR instead of the Old CPR and 'realized that error only when we read the respondents' skeleton for this hearing'. Nevertheless, the applicants accepted that rule 39.5 of the Old CPR is the correct and applicable rule, and owing to that procedural error, they seek leave to amend the grounds of appeal.
- [32] However, Mr. Quest KC submitted that notwithstanding the amended grounds of appeal, the fundamental point underlying the appeal has not changed. That is because the principal point, which entitles the applicants' leave to appeal to the Privy Council, is that Kendall Law did not comply with the mandatory requirement of rule 63.6(4) of the Old CPR that any order made must be served by the applicant on the other parties' legal practitioners and personally on the former client.

- [33] In addition, Mr Quest KC submitted that CPR 63.7(2) provides that any order made under rule 63.6 takes effect from the date of service of the order. The effect of which is that Kendall Law formally remained legal practitioners on the record as acting for the applicants because CPR 63.7 provides that the order never came into effect. Thus, he added that the Court of Appeal was ‘at least arguably wrong’ in treating Kendall Law’s non-compliance with the service requirement under CPR 63.6 ‘as essentially either an irrelevant matter or simply one factor to be thrown into the mix’.
- [34] On the respondents’ reliance on **Brazil v Brazil**, learned King’s Counsel submitted that this case did not deal with ‘a very stark situation like the present one’, where the failure to comply with mandatory provisions resulted in the applicants not having the opportunity to be heard. He submitted that both the Old CPR and New CPR, although differently drafted, reflect in different ways ‘an important underlying principle which is that it will be unfair for the rules to treat the practitioner’s knowledge as fixed to the client for the purpose of notice of the hearing, while allowing the client to be prejudiced if their practitioners on the record then fail to attend at the hearing’.
- [35] When pressed by the Court, Mr. Quest KC maintained that the applicants have a procedural right under CPR 63.6 and CPR 63.7 not to be deprived of legal representation other than by order of the court. He did not accept that Kendall Law’s service of the removal Application and removal Order via email to Mr. Lock was sufficient because ‘the rules provide in this case expressly that there must be personal service and service by email on Mr. Lock would not be personal service’. In the circumstances of this case where the applicants relied on a litigation manager to provide instructions to Kendall Law, Mr. Quest KC said this could not be considered a waiver of the personal service requirement of CPR 63.6 because the rules do not provide for any waiver and in any event a waiver must be unequivocal. He submitted that it is ‘very difficult to see’ how the applicants’ conduct in allowing Mr. Lock ‘to be the recipient of day-to-day instructions from Kendall’s or even other

kinds of instructions' could be treated as unequivocally waiving their right under CPR 63.6(4) to personal service.

### **Respondents' Submissions (1<sup>st</sup> to 6<sup>th</sup> respondents)**

- [36] Learned King's Counsel Mr. Ng relied on his written submissions but submitted that the applicants advanced a different case at the hearing from what they argued at first instance and before the Court of Appeal. He stated that the applicants' case was that a court's decision whether to set aside a judgment or order under rule 39.5 of the Old CPR is discretionary, taking all circumstances into account, not just one factor to the exclusion of others.
- [37] Mr. Ng KC also submitted that it was common ground between the parties, both in writing and orally at first instance and on appeal, that rule 39.5 of the Old CPR was being addressed and not the New CPR. Additionally, the applicants' argument in the court below was that the good reason test in the Old CPR 39.5 was satisfied because of a communications breakdown between their lawyers and litigation coordinator/manager Mr. Lock.
- [38] Mr. Ng KC further submitted that the applicants have not satisfied the test as to what constitutes a question of law of great general or public importance or otherwise which was settled by this Court in **Renaissance Ventures v Comodo Holdings**.<sup>21</sup> Based on that test, learned King's Counsel submitted that the question for this Court's determination is whether there is a question of law of great general or public importance to the effect that the good reason test mandatorily requires the court to allow a set aside application simply because a notice to come off the record, has not been served personally. The answer to this question, he submitted, is no, considering it was confirmed in **Brazil v Brazil** that the correct approach 'is to examine all the evidence relevant to [the defendant's] non-attendance to decide

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<sup>21</sup> BVIHCMAP2018/005 (delivered 8<sup>th</sup> October 2018, unreported) at paragraphs 10 and 11.

whether there is good reason to justify the court exercising its discretion', which was considered by the Court of Appeal.<sup>22</sup>

- [39] While Mr. Quest KC attempted to distinguish the **Brazil v Brazil** case with the ground 6 situation in his oral submissions, Mr. Ng KC submitted that the applicants relied on that very case in the substantive appeal.<sup>23</sup> In fact, Mr. Ng KC submitted, the applicants referred the Court of Appeal to **Brazil v Brazil**<sup>24</sup> for the applicable test in determining the set aside application, which was quoted and applied in the Court of Appeal's Judgment.<sup>25</sup> Learned King's Counsel noted that the learned judge and the Court of Appeal 'engaged with the totality of the evidence presented' in considering the set aside application, and the latter determined that the learned judge had committed no error of law in adopting that approach which was in line with what was regarded as settled case law by both sides.<sup>26</sup>

#### **Applicants' Submissions in Reply**

- [40] Mr. Quest KC disagreed with learned King's Counsel for the respondents' submission that the way in which the appeal was argued at the hearing is different from how it was in the courts below and directed the Court's attention to paragraphs 37 and 38 of the appellants' skeleton arguments.<sup>27</sup> He added that the applicants 'recognize that at this stage that we can't pursue a purely discretionary point', hence the reason why this application was confined to a question of law arising out of the application of CPR 63.6 and there is no inconsistency at all in that approach.
- [41] Learned King's Counsel also agreed that the applicants only advanced ground 6 at this hearing because 'it raises an important and unsettled point of law which is suitable for the Privy Council'. That is, the failure to comply with the rules in relation

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<sup>22</sup> Judgment dated 30<sup>th</sup> January 2026 at paragraph 164.

<sup>23</sup> Hearing Bundle Vol. 1, page 74, at paragraph 51(c) of the Appellants' Skeleton Argument (Set Aside Appeal) filed on 25<sup>th</sup> February 2026.

<sup>24</sup> [2002] EWCA Civ 1135 at paragraph 12.

<sup>25</sup> Judgment dated 30<sup>th</sup> January 2026 at paragraph 164.

<sup>26</sup> Judgment dated 30<sup>th</sup> January 2026 at paragraphs 192 to 195.

<sup>27</sup> Hearing Bundle Vol. 1, at page 70.

to personal service, is not a matter for this Court's discretion in that respect and is 'a reason good enough in itself to explain the non-attendance. Thus, Mr. Quest KC submitted that the Court of Appeal 'was arguably wrong and if they are arguably wrong, it's a point of sufficient general importance that the Privy Council ought to look at it'.

### **Preliminary Issue – Application to Amend Notice of Motion for Leave to Appeal**

[42] Counsel for the applicants' proposed that this application to amend be dealt with as part of his submissions on the main application, to which counsel for the respondents concurred. The purpose of this amendment is to rely on the provisions of the Old CPR instead of the New CPR. This proposed amendment does not extend the initial application; it was filed timely; the respondents had an opportunity to respond; and the respondents did not oppose the application. In the circumstances therefore and in the furtherance of the overriding objective outlined in CPR 1.1, the application to amend the notice of motion for leave to appeal is granted.

[43] Having considered the applications, the amended draft grounds of appeal, the written and oral submissions, the only issue which arises for determination is whether there is a question of great general or public importance or otherwise, which in the opinion of this Court, ought to be submitted to His Majesty in Council for determination.

### **Legal Framework**

[44] The legal framework for an appeal to His Majesty in Council lies in section 3 of the **BVI Order**. Concerning the matter instant, however, the applicants contend that their right of appeal lies in section 3(2)(a) which states thusly:

- "3. ...
- (a) ...
- (b) ...
- (c) ...

(2) Subject to the provisions of this Order, an appeal shall lie from decisions of the Court to Her Majesty<sup>28</sup> 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; and

(b) ....”

[45] Leave to appeal under section 3(2)(a) of the **BVI Order**, is usually granted ‘when there is a difficult question of law involved’: **Martinus Francois v The Attorney General**.<sup>29</sup> It was also established therein that in determining what is a matter of great general or public importance, the Court ‘usually looks for matters that involve a really 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 to the public’.<sup>30</sup>

[46] In **Renaissance Ventures Ltd et al v Comodo Holdings Ltd**,<sup>31</sup> it was opined that ‘where there is no genuine dispute on the applicable principles of law underlying the question which the applicant wishes to pursue in the 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.’<sup>32</sup> Where the principle is one established by this Court ‘but is either unsettled, in the sense that there are differing views or conflicting dicta,<sup>33</sup> 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

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<sup>28</sup> By virtue of the coronation of Prince Charles on 6<sup>th</sup> May 2023 as King Charles III, this should now be read as ‘His Majesty’.

<sup>29</sup> SLUHCVP2003/0037 (delivered 7<sup>th</sup> June 2004, unreported) at paragraph [13].

<sup>30</sup> *ibid* at paragraph 13.

<sup>31</sup> BIVHMAP2018/0005 (delivered 8<sup>th</sup> October 2018, unreported).

<sup>32</sup> *ibid* at paragraph 10.

<sup>33</sup> *Etoile Commerciale SA v Owens Bank Ltd. (No. 2)* (1993) 45 WIR 136, and *Golden Meditech Stem Cells (BVI) Company Limited v Blue Ocean Creation Investment Hong Kong Ltd et al BVIHMAP2023/0022* (delivered 12<sup>th</sup> February 2026, unreported).

reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships' Board.'<sup>34</sup>

[47] However, Pereira CJ noted, 'where the real question on the proposed appeal is the way in which 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. In such a case, the question on the proposed appeal 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.'<sup>35</sup> Further, for leave to be granted, the question of law which is said to be of great general or public importance must arise from the way in which 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'.<sup>36</sup>

[48] It is now well settled that the critical question to consider is whether the application raises a genuinely disputable issue of law of great general or public importance or otherwise as 'authoritatively defined'<sup>37</sup> in **Martinus Francois v The Attorney General**. In **Caldicott Worldwide Ltd v Siong Beng Seng et al**, the question raised was 'whether an arbitration clause between a company and a shareholder can be used to stay the factual basis of a shareholder-versus-shareholder unfair prejudice claim, has wide-reaching implications for the operation of section 1841 of the BCA [BVI Business Companies Act] and for minority shareholder protection in the BVI and similar jurisdictions'.<sup>38</sup> Theodore JA [Ag.] found that the applicants had met the test for leave to appeal because the issue 'is 'genuinely disputable' and 'substantial', and its resolution is 'necessary for the future guidance of the courts or the public'. He also found that it was not 'merely of interest to the parties but affects

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<sup>34</sup> BVIHCP2018/0005 (delivered 8<sup>th</sup> October 2018, unreported) at paragraph 10.

<sup>35</sup> *ibid* at paragraph 10.

<sup>36</sup> *ibid* at paragraph 11.

<sup>37</sup> *Caldicott Worldwide Ltd v Siong Beng Seng et al* BVIHCP2023/0009 (delivered 17<sup>th</sup> October 2025, unreported) at paragraphs 29 and 32.

<sup>38</sup> *ibid* at paragraph 43.

the integrity of statutory remedies for thousands of companies where similar questions may arise.’<sup>39</sup>

[49] This Court also considered an application for leave to appeal to the Privy Council pursuant to section 3(2)(a) of the **BVI Order** in **Emmerson International Corporation v Renova Holdings Limited**.<sup>40</sup> The applicants in that case contended that the Court of Appeal erred in law in holding that the decision whether to impose a confidentiality club is a ‘discretionary case management decision’, and in rejecting Emmerson’s submissions that three threshold conditions must be met before the court may order a confidentiality club be imposed. They also contended that the Court of Appeal erred in law in not finding that even if the threshold conditions were met (and thus the court was satisfied that the making of a confidentiality club order is necessary), considerable caution is nevertheless required where a confidentiality club is sought in respect of asset disclosure pursuant to a freezing order.<sup>41</sup>

[50] Having examined the authorities cited by the parties, the Court found that the law relating to confidentiality clubs is not in dispute and that the law relating to the establishment or continuation of confidentiality clubs requires the court to balance the interests of justice between the parties. It noted that in carrying out that balancing exercise, the court will consider many factors including the need for caution in making such orders.<sup>42</sup> The Court therefore held that no serious issue of great general or public importance arises in law or otherwise for which it required guidance from His Majesty in Council and dismissed the Notice of Motion.<sup>43</sup>

[51] In **Golden Meditech Stem Cells (BVI) Company Limited v Blue Ocean Creation Investment Hong Kong Ltd et al**,<sup>44</sup> relying on this Court’s earlier decision in **Marinor Enterprises Limited et al v First Caribbean International Bank**

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<sup>39</sup> *ibid* at Held Point no. 4 and paragraph 44.

<sup>40</sup> BVIHCMAP2019/0001 (delivered 7<sup>th</sup> July 2023, unreported).

<sup>41</sup> *ibid* at paragraph 9.

<sup>42</sup> *ibid* at paragraph 45.

<sup>43</sup> *Ibid* at paragraph 47.

<sup>44</sup> BVIHCMAP2023/0022 (delivered 12<sup>th</sup> February 2026, unreported).

**(Barbados) Ltd**,<sup>45</sup> Ward JA opined that for leave to be granted the issue ‘should go beyond private disputes and have broader significance, leading to a decision that sets precedent for others in commercial and domestic matters’.<sup>46</sup>

- [52] The issue under consideration in **Golden Meditech Stem Cells**, was whether, as contended by the applicants, the scope of the first condition of the **Ladd v Marshall**<sup>47</sup> test for adducing fresh evidence on appeal is a question of great general or public importance because there are conflicting decisions of this Court in relation to whether the first limb of the test includes evidence that did not exist at the time of the trial or a change of circumstances post-trial.<sup>48</sup> Ward JA agreed that this was an issue on which the Court can benefit from the Privy Council’s opinion as he was also of the view that there are conflicting decisions of this Court on the question. He added that such conflict ‘provides a clear basis for finding that the question involved in the appeal is one of great general or public importance such that it could benefit from guidance from the Privy Council’.<sup>49</sup>

### Discussion

- [53] It is worth noting that counsel for the applicants did not advance any arguments, whether in writing or orally, on the ‘otherwise’ limb of section 3(2)(a) of the **BVI Order**. Mr. Quest KC’s submissions focused only on there being a ‘genuinely novel question’ for the Privy Council’s determination, because it has legal implications for the proper administration of justice throughout the Eastern Caribbean region. Likewise, Mr. NG KC’s submissions only focused on the first limb of section 3(2)(a) of the BVI Order. Accordingly, the Court will deal with the first limb of section 3(2)(a) being whether the appeal raises a question of great general or public importance for referral to the Judicial Committee of the Privy Council.

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<sup>45</sup> DOMHCVAP2013/0003 (delivered 6<sup>th</sup> July 2016, unreported).

<sup>46</sup> BVIHCMAP2023/0022 (delivered 12<sup>th</sup> February 2026, unreported) at paragraph 39.

<sup>47</sup> [1954] 1 WLR 1489.

<sup>48</sup> BVIHCMAP2023/0022 (delivered 12<sup>th</sup> February 2026, unreported) at paragraph 44.

<sup>49</sup> BVIHCMAP2023/0022 (delivered 12<sup>th</sup> February 2026, unreported) at paragraph 65.

- [54] For leave to appeal to the Privy Council, the applicants must satisfy this Court that there is a question involved and that, by reason of its great general or public importance or otherwise, it ought to be submitted to Her Majesty in Council.
- [55] In this case the applicants' engaged a litigation manager, Mr. Lock, who was 'the sole point of contact with their legal representatives'<sup>50</sup> the law firm Kendall Law. The applicants were content, throughout proceedings in the court below, to provide instructions to Kendall Law through and to receive responses thereto from Mr. Lock. They now complain that service of a removal notice and removal order on them via email to Mr. Lock was in breach of the mandatory provisions of CPR 63.6 and that this failure can be raised to the level of a question of great general or public importance to litigants and the proper administration of justice in the Eastern Caribbean region.
- [56] This allegedly 'novel question' submitted by the applicants does not concern a really serious issue of law, it does not involve any constitutional provision that has not been settled, it does not involve any area of law in dispute, neither is there a legal question the resolution of which poses dire consequences to the public according to the **Martinus Francois** test. This allegedly 'novel question' does not raise any genuinely disputable and substantial issue for which its resolution is necessary for the future guidance of the courts or the public as was held in **Caldicott Worldwide Ltd v Siong Beng Seng et al.** Moreover, it does not involve an issue on which this Court can benefit from the Privy Council's opinion or guidance as stated in **Golden Meditech Stem Cells (BVI) Company Limited v Blue Ocean Creation Investment Hong Kong Ltd et al.** I am of the view that the question posed by the applicants does not reveal any difficult question of law relating to the mandatory provisions of CPR 63.6 and 63.7, or the good reason test in CPR 39.5 to warrant referral to His Majesty in Council as held in **Emmerson International Corporation v Renova Holdings Limited.**

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<sup>50</sup> Hearing Bundle Vol.1 at pages 315-323, paragraph 4 of the First Affirmation of Lock Wai Kit Kenneth.

[57] The fact is that the applicants are aggrieved with the way in which the learned judge exercised his discretion in considering their set aside application and with the Court of Appeal's concurrence. In keeping with this Court's decision in **Renaissance Ventures Ltd et al v Comodo Holdings Ltd**, while this question may be of great importance to the applicants, it would not for that reason alone be a question of great general or public importance. Instead, the question presented by the applicants as 'genuinely novel' is really a private dispute regarding communication with their legal practitioners through an intermediary, and email correspondences from the legal practitioners being curiously routed to that intermediary's junk email folder.

### **Disposition**

[58] The notice of application to amend the notice of motion for leave to appeal to his majesty in council filed on 22<sup>nd</sup> May 2026 is granted. However, the notice of motion for leave to appeal to the Judicial Committee of the Privy Council filed on 20<sup>th</sup> February 2026 is dismissed.

[59] The applicants shall bear the costs of the notice of motion for leave to appeal to the Judicial Committee of the Privy Council to be assessed by a master or judge of the Commercial Division of the High Court unless agreed within 21 days of the date of this judgment.

I concur.  
**Paula Gilford**  
Justice of Appeal [Ag.]

I concur.  
**Brian Cottle**  
Justice of Appeal [Ag.]

**By the Court**

**Deputy Chief Registrar**