Neutral Citation Number: [2026] CICA (Civ) 12

MAN ISLANDS COURT OF APPEAL
FROM THE GRAND COURT OF THE CAYMAN ISLANDS
ON

CICA CIVIL APPEAL No. 0029 of 2024
(formerly GC 0076 of 2024)

BETWEEN

BILIKA HARRY SIMAMBA

Applicant/Proposed Appellant

-and-

(1) MARGARET RAMSAY-HALE, CHIEF JUSTICE, MEMBER, JLSC

(2) NICK FREELAND, CHAIRPERSON, JLSC

(3) SIR JOHN GOLDRING, MEMBER, JSLC

(4) JUSTICE ADRIAN SAUNDERS, MEMBER, JLSC

(5) DAME JANICE PEREIRA, MEMBER, JLSC

(6) GUY LOCKE, MEMBER, JLSC

(7) MYRTLE BRANDT, MEMBER, JLSC

(8) ATTORNEY GENERAL

Respondents

Before:	The Right Hon. Sir Nicholas Underhill, Justice of Appeal The Right Hon. Sir Stephen Irwin, Justice of Appeal The Right Hon. Sir Patrick Elias, Justice of Appeal
Appearances:	Mr Bilika Simamba, Applicant, in person Mr Tom Hickman KC, instructed by Ms Heather Walker of the Attorney General's Chambers for the Respondents
Heard:	23-24 March 2026

Draft circulated: 4 June 2026
Judgment delivered: 23 June 2026

JUDGMENT

Sir Nicholas Underhill, JA

INTRODUCTION

1. This is a renewed application for leave to appeal, in accordance with rule 15A of the Court of Appeal Rules, against a decision of McCarthy J (Ag.) refusing the Applicant leave to apply for judicial review: his judgment was delivered on 27 December 2024. The application was initially refused on the papers by a decision of Montgomery JA dated 12 June 2025 (re-issued on 9 September). Somewhat oddly, the Notice of Renewal is dated 2 June, the Applicant having received a draft of Montgomery JA's decision in advance of its formal promulgation, but nothing turns on that.

2. The decision of which judicial review is sought is the summary dismissal of a complaint against Kawaley J in respect of his conduct as a Justice of the Grand Court in a matter in which the Applicant was plaintiff ("the Complaint"). The Complaint was brought under the Complaints Procedure promulgated, in accordance with its statutory obligations, by the Judicial and Legal Services Commission ("the JLSC"). The dismissal of the Complaint was communicated in a letter from the Chief Justice (who is a member of the JLSC) dated 15 February 2024.

3. The Respondents to the proposed claim for judicial review are the Chief Justice and the other members of the JLSC (who include the President of the Court of Appeal) together with the Attorney General. That being the case, it has been thought right that this renewal application, and the substantive appeal if leave were granted, should be heard by Justices of Appeal who otherwise have no connection with the judicial system of the Cayman Islands; and myself and the other members of the Court, all being retired Lord Justices of the Court of Appeal of England and Wales, have been appointed by the Governor on a temporary basis for that purpose.

4. We heard the renewed application on 23 and 24 March 2026. At the request of the Applicant, but with the consent of the Respondents, the hearing was conducted remotely. The Applicant represented himself and did so articulately and with courtesy. The Respondents were represented by Mr Tom Hickman KC and Ms Heather Walker, Crown Counsel, to whom we are grateful for their careful and cogent submissions.

THE COMPLAINT

THE ORIGINAL GRAND COURT PROCEEDINGS

5. I start with the proceedings in the context of which the alleged misconduct by Kawaley J is said to have occurred.

6. *The Applicant.* The Applicant is a retired Cayman Islands Attorney at Law. He has had a long career as a legislative draftsman, initially in Zambia and subsequently in the Caribbean. From 2003 to 2015 he was Legislative Counsel, latterly Senior Legislative Counsel, in the Legislative Drafting Department of the Portfolio of Legal Affairs of the Government of the Cayman Islands. In recent years he has been living in Canada.

7. *The claims.* On 6 March 2014 the Applicant issued proceedings in the Grand Court against the Health Services Authority ("the HSA") advancing two distinct claims for damages for medical negligence. The Complaint relates to things said by Kawaley J in a judgment given in those proceedings on 17 June 2019 ("the June judgment"). The background can be sufficiently summarised for introductory purposes as follows.

8. *The January hearing.* On 9 January 2019 a case management hearing took place before Kawaley J: I will refer to this as "the January hearing". The Applicant was in Canada, and he was permitted to attend by video-link. The focus at the hearing was on the HSA's application that the claims should be struck out on one or both of two grounds. The first was that the effect of section 12 of the Health Services Authority Act (2010 Revision) ("section 12") was to render the HSA immune from liability in respect of the claims ("the immunity point"). The second was that the claims were bound to fail because the Applicant had stated that he did not intend to adduce any (or, perhaps,

any further) expert evidence ("the expert evidence point"). (The reason for the delay since the start of proceedings was that it had been hoped that the immunity point would be authoritatively resolved by the Court of Appeal in other proceedings; but unfortunately that did not occur.) Kawaley J directed that there be a two-day hearing of the HSA's application on 6 and 7 May: I will refer to this as "the May hearing". There is an issue as to what was said at the January hearing about whether the Applicant would wish and would be permitted to attend the May hearing by video-link (for short, a "video-link request").

9. *The emails.* In the weeks running up to the May hearing there was email correspondence between the parties and Court staff about whether the Applicant would be permitted to appear by video-link. I shall have to return to the details later, but the eventual outcome was that on 3 May 2019 he was informed that his request was refused.

10. *The May hearing.* The hearing of the HSA's application proceeded on 6 May 2019 in the Applicant's absence. In the event it lasted only half an hour and Kawaley J made no order but adjourned the application and gave the Applicant the opportunity to make further written submissions.

11. *The June hearing.* In subsequent correspondence, Kawaley J acceded to a request from the Applicant that there be a further hearing. That hearing took place, *inter partes,* on 3 June 2019 and lasted for over an hour: I will refer to it as "the June hearing". The Applicant attended by video-link. Kawaley J delivered judgment on 17 June ([2019] (2) CILR 213): this is the June judgment referred to above. As regards the expert evidence point, he held that the claims were indeed bound to fail unless supported by further expert evidence, but that the Applicant should be given an opportunity to file such evidence: he made an unless order to that effect with a deadline of 31 October. Although he considered the immunity point, he declined to determine it and adjourned it with liberty to apply.

12. *The statements complained of in the June judgment.* The Complaint relates to two passages in the June judgment which are said to contain deliberate untruths. For introductory purposes it is sufficient to summarise them as follows:

(1) The para. 5 allegation: what Kawaley J said about the Applicant's request to appear by video-link. In paras. 5-9 Kawaley J explains the circumstances which had led to the June hearing. In that context he says, in para. 5, that the Applicant had not made a timeous application to attend the substantive hearing by video-link: I set out the full passage at para. 43 below. The Applicant's case is that Kawaley J knew that that such an application had in fact been made but deliberately said the opposite.

(2) The para. 75 allegation: failure to refer to the Applicant's authorities. In paras. 74-75 Kawaley J summarises the Applicant's submissions on the immunity point. At para. 74 he identifies two basic points, and in para. 75 he goes on to say that these were "elaborated upon, primarily through statements of broad principle". The Applicant says that that is a deliberate misrepresentation of his submissions inasmuch as it fails to refer to the fact that he had relied on no fewer than 52 authorities.

13. *The striking out of the claims.* The deadline for filing expert evidence was subsequently extended, but the Applicant did not comply with it and the claims were eventually struck out on that basis on 17 September 2020. (The Applicant told us that he did subsequently obtain expert evidence which he says supported his claims; but, as he acknowledged, that is not relevant to the issues before us.)

14. I should emphasise that we are not concerned with an appeal against any of Kawaley J's decisions set out above or the striking out of the claims. They are relevant only as the context for the allegation that he lied in the June judgment.

COURT PROCEEDINGS CHALLENGING THE STRIKING-OUT

15. The Applicant has sought unsuccessfully to challenge Kawaley J's decision of 17 June 2019, and/or the consequent dismissal of his claims, in various sets of proceedings. These attempts have generated a number of decisions which are an important background to the Complaint. I need not give a full account of them, but a short summary is necessary.

16. *The constitutional motion.* On 12 November 2019 the Applicant filed an original motion in (unusually) the Court of Appeal claiming that he had been denied a fair trial contrary to section 7

of the Bill of Rights ("the constitutional motion"). The Respondents were the Governor and the Attorney General. The motion was supported by an affidavit dated 10 November: this included the Applicant's account of the circumstances in which the May hearing had proceeded in his absence. On 22 April 2020 the Respondents filed a response.

17. *The constitutional petition.* On 12 June 2020 the Applicant sought leave from the Grand Court to file a petition (G0093 of 2020) raising a similar claim to the constitutional motion: I refer to this as "the constitutional petition". Again, the Respondents were the Governor and the Attorney General.

18. *The out-of-time appeal.* On 19 June 2020 the Applicant lodged an out-of-time appeal against Kawaley J's order of 17 June 2019 (CICA (Civil) Appeal 36 of 2019) ("the out-of-time appeal"). Among the grounds of appeal were the fact that the May hearing had proceeded in his absence, and he alleged that Kawaley J had deliberately misrepresented the position about his video-link request and failed to refer to his citation of 52 authorities on the immunity point.

19. *The decisions of Beatson JA.* On 5 August 2020 Beatson JA considered on the papers both the constitutional motion and the Applicant's application for leave to appeal against Kawaley J's decision out of time. He dismissed both.

20. *The personal action.* On 28 October 2020 the Applicant commenced proceedings by writ against Kawaley J and Ms Myers (G0161 of 2020) ("the personal action"). This too complained that Kawaley J had lied about his video-link request.

21. *The decision of St John-Stevens J.* On 28 October 2021 St John-Stevens J (Ag) struck out both the constitutional petition and the personal action and imposed a two-year restraint order.

22. *The decision of Martin JA.* Leave to appeal against the striking-out orders was refused by Martin JA on 22 December 2021 (CICA (Civil) Appeal 20 and 21 of 2021). His decision reviewed in some detail the Applicant's case that Kawaley J had lied in the June judgment and found in trenchant terms that it was groundless.

23. *The decision of the Full Court.* The Applicant renewed his application for leave, but it was dismissed by the Full Court, comprising Rix JA, Moses JA and Birt JA, in a judgment of the Court dated 10 November 2022. The Court endorsed Martin JA's reasoning. It also dismissed an appeal against the restraint order (which the Applicant was entitled to pursue as of right).

24. *The Appeal to the Privy Council.* On 17 May 2023 the Judicial Committee of the Privy Council refused the Applicant permission to appeal against those decisions.

THE COMPLAINT

25. Having been unable to challenge Kawaley J's decision of 17 June 2019 in any of the proceedings identified above, on 2 December 2023 the Applicant filed the Complaint in the form of a letter to the Chief Justice "as Complaints Authority". That is not in fact the correct way to initiate a complaint under the Complaints Procedure, but the letter makes it plain that the Applicant's intention was to invoke that procedure (albeit "under protest") and it was so treated.

26. The Complaint runs to some 23 pages and was accompanied by copies of various contemporary documents in the form of twenty attachments. It contains a good deal of background material and a variety of criticisms of the conduct of Kawaley J and others, but the actual particularised complaint appears at paras. 37-40 and is that Kawaley J lied in the two passages in the June judgment identified at para. 12 above: I return to these paragraphs later.

27. Paragraph 3 of the Complaints Procedure is headed "Preliminary Consideration". The relevant provisions for our purposes are as follows:

> "(1) Where a complaint has been initiated against a judicial officer, whether by the Commission on its own motion or by a Complainant on the prescribed form, the Manager shall refer to a Complaints Committee, comprised of the Chief Justice, the President of the Court of Appeal, and not less than two members appointed by the Chairman of the JLSC, for preliminary consideration; and the Manager may, if so directed by the Commission, serve the judicial office-holder who is the subject of the complaint, with a copy of the complaint.

(2) Unless there are reasons why it believes that a complaint should be investigated, the Complaints Committee may recommend dismissal of a complaint, or part of a complaint, to the JLSC if the complaint falls into any of the following categories—

a) it is about a judicial decision or judicial case management, and raises no question of misconduct;

b) …;

c) it is vexatious, frivolous or unmeritorious;

d) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;

e) it is manifestly untrue, mistaken or misconceived;

f) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;

g)– h) …

(3)-(6) …

(7) Upon conclusion of its work the Committee shall issue a Report to the JLSC. The Report shall indicate whether the complaint should be dismissed and, if so, for what reasons; or shall provide the Committee's initial observations on the complaint including in particular whether there is need for the Commission to employ a Special Investigator to investigate the complaint."

Only heads (c)-(f) under sub-paragraph (2) are directly material, but I have reproduced head (a) because it states an important background point: the Complaints Procedure is not a vehicle for reviewing judicial decisions, which can only be challenged by appeal.

THE DISMISSAL OF THE COMPLAINT

28. The Complaint was duly referred to the Complaints Committee for preliminary consideration in accordance with paragraph 3 of the Procedure. On a date which is not stated but which was evidently in late January or early February 2024 the Committee produced an eleven-page report headed "Recommendation to the JLSC of the Complaints Committee in respect of Mr Simamba's complaint against Justice Kawaley".

29. The Committee's report begins with a full summary of the circumstances giving rise to the complaint and then proceeds to refer to the previous legal proceedings. In the latter context it quotes at length from the ruling of Martin JA referred to at para. 22 above. The final section, headed "Decision", reviews the allegations that Kawaley J lied in paras. 5 and 75 of the June judgment and finds that they are unarguable and totally without merit. As regards para. 5 the Committee refers to the sequence of emails relating to whether the Applicant could attend the June hearing remotely and finds that they are consistent with what Kawaley J had said in the June judgment (paras. 23-25). As regards para. 75 it finds that the allegation is misconceived (para. 26). At para. 27 it observes that not only are the allegations meritless in themselves but that the Applicant was seeking to re-argue allegations which had already been comprehensively rejected by the Courts (para. 28). Para. 29 reads:

> "In the circumstances, this complaint falls to be dismissed for a number of reasons. It is '*vexatious, frivolous or unmeritorious; without substance; manifestly ... misconceived*' and "*raises a matter which has already been dealt with ... and does not present any material new evidence*." There are no reasons why it should be investigated."

It will be seen that that language invokes heads (c)-(f) of paragraph 3 (2) of the Complaints Procedure.

30. By a letter dated 15 February 2024 the Chief Justice informed the Applicant that at a meeting on 8 February the JLSC had accepted the Complaints Committee's recommendation and that his complaint was summarily dismissed. The letter reads:

> "Your 2 December 2023 complaint in respect of Justice Kawaley's conduct was … considered by the JLSC's Complaints Committee to which it was referred pursuant to section 3(1) of the JLSC's Complaints Procedure. The Committee, of which I was a member, undertook a thorough review of the judgments of Justice Kawaley and of the Court of Appeal which considered the several allegations made by you that Justice Kawaley had lied.
>
> The Committee concluded that you were seeking to re-argue allegations which had been comprehensively rejected by the Courts and noted that the Commission is not and cannot operate as a further Court of Appeal for a dissatisfied litigant. The Committee determined, among other things, that the complaint was '*frivolous, vexatious or unmeritorious*' and raised a matter which had already been dealt with. The Committee recommended that the complaint be dismissed as it did not warrant investigation.
>
> The Commission considered the Committee's report at a meeting convened on 8 February 2023 and accepted the Committee's recommendation.
>
> Accordingly, I write to advise that your complaint against Justice Kawaley is summarily dismissed and no further action will be taken. Please find attached hereto a copy of the Recommendation to the JLSC of the Complaints Committee for your records."

THE JUDICIAL REVIEW PROCEEDINGS

THE CLAIM

31. On 20 February 2024 the Applicant filed the application for leave to apply for judicial review which has led to the current appeal, supported by a short affidavit exhibiting various documents. The decision challenged is the dismissal of the Complaint, and the primary relief sought is an order of *certiorari* to quash that decision, together with an order that the matter be sent back to the Chief Justice for determination; there are a number of ancillary heads of relief sought but I need not itemise them here.

32. The Applicant's grounds for applying for judicial review ("the JR grounds") are pleaded under fifteen headings: these are not numbered, but in his subsequent skeleton argument dated 3 August 2024 they are labelled A-O. They are somewhat diffuse and repetitious, but they can be sufficiently summarised as follows:

(1) *The decision to dismiss the Complaint.* The Applicant's essential case is that the summary dismissal of the Complaint was irrational because the evidence that Kawaley J had lied was such as to require a full investigation: see grounds I and N. Ground D raises what is in substance the same point. Ground L is that the decision is insufficiently reasoned, and ground O is that the decision did not satisfy the constitutional requirements for a disciplinary inquiry, essentially because there had been no real consideration of the evidence. As will appear, and as the Applicant accepted before us, these are the key grounds in his claim.

(2) *The identity of the decision-maker.* The Applicant claims that it is clear from the terms of the Chief Justice's letter of 15 February 2024 that although the decision to dismiss the Complaint was communicated by her, it had been taken by the JLSC; and that that is contrary to section 106 (1B) of the Constitution (introduced by article 3 (3) of the Cayman Islands Constitution (Amendment) Order 2016 ("the 2016 Order")), the effect of which on its true construction is that such a decision constitutes an exercise of disciplinary control which is vested in the Chief Justice alone. This point is principally made in grounds A (b), E and F, but it also underlies ground B.

(3) *The Procedure under the Complaints Rules.* The Applicant says that the Complaints Rules and/or the manner in which they were applied in his case were procedurally unfair – grounds A (a) and C.

(4) *Bad faith.* The Applicant alleges that in their handling of the Complaint the Chief Justice and the JLSC were guilty of intellectual dishonesty, bias and bad faith and had improper motives (to which I will refer compendiously as "bad faith") – grounds G, H, J and K.

THE DECISION OF McCARTHY J

33. McCarthy J held a directions hearing on 22 July 2024 at which, among other things, he gave permission to the Respondents to file written submissions in response to the application and directed an oral hearing on 25 September. The Applicant submitted that that hearing should be in open Court rather than in chambers, and McCarthy J directed that he develop that contention in written submissions.

34. The hearing duly took place before McCarthy J on 25 September 2024. The Judge did not accept the Applicant's submission that it should be in open Court, which accordingly proceeded in chambers. He heard oral submissions from the Applicant by video-link. The Respondents did not attend, but the Judge considered the written submissions of Mr Hickman and Ms Walker for the Respondents filed in accordance with his previous direction.

35. McCarthy J's judgment refusing leave to apply for judicial review was circulated to the parties in draft on 29 November 2024 and was formally promulgated on 27 December. I will not give a summary here because the arguments before him seem to have had a different focus; but the overall effect of his decision was that the claim had no real prospect of success.

THE ISSUES ON THE APPEAL

36. On 31 December 2024 the Applicant filed a Notice of Appeal against McCarthy J's judgment. There are seven grounds of appeal. Grounds 1-6 advance various specific challenges to the

decision, including not only criticisms of the procedure which McCarthy J followed and his reasoning but also serious allegations of bias and misfeasance. In ground 7 he invites this Court, on the basis of those grounds, to consider for itself the original JR grounds rather than focusing on McCarthy J's reasoning. I agree that the ultimate question for us is whether leave to apply for judicial review should have been given, and I address that question under head (A) below. However, the Applicant did also pursue some of the other grounds of appeal, and I deal with them under head (B).

37. I should add that the Applicant structured his oral submissions before us by reference to his Notice of Renewal following the refusal of leave on the papers by Montgomery JA, which contains no fewer than 27 "grounds" challenging alleged errors in her reasoning or conclusions. We permitted him to do so since he had prepared on that basis, but it is necessary to be clear that we are not concerned with an appeal from Montgomery JA's decision. The grounds on which we have ultimately to focus are the grounds of appeal from the decision of McCarthy J, which in turn take us back to the JR grounds. The grounds in the Notice of Renewal are relevant only to the extent that they feed into that exercise, which not all of them do.

38. I should mention one technical point about the consequences if we give leave to appeal. Formally that would mean only that it was *arguable* that McCarthy J should have given leave to apply for judicial review, and the purpose of the full hearing would be to decide that question definitively: the outcome of that appeal if successful would then be that the substantive application would have to go back to the Grand Court for determination. In England and Wales the provisions of CPR 52.8 give the Court of Appeal greater flexibility when determining an application for permission to appeal against a refusal of permission to apply for judicial review, by empowering it itself to give permission to apply for judicial review, rather than merely permission to appeal, and, if it does so, to choose between remitting the substantive application to the High Court or retaining it for itself. There is no such provision in the Grand Court Rules, though possibly the same outcome could be achieved by the exercise of some procedural ingenuity. In the interests of brevity I will ignore this complication and refer to the effect of our giving leave to appeal as if it were equivalent to leave to apply for judicial review.

(A) SHOULD LEAVE TO APPLY FOR JUDICIAL REVIEW HAVE BEEN GIVEN?

39. The test for whether leave to apply for judicial review should have been given, subject to any discretionary considerations, is whether the Applicant's original grounds of review had a realistic prospect of success – see para. 14 (4) of the judgment of Lord Bingham and Lord Walker in *Sharma v Browne-Antoine* [2006] UKPC 57, [2007] 1 WLR 780.

40. It is important to appreciate that that inquiry is not necessarily confined to the arguability of the substantive grounds of review. Even where legal errors in a decision-making process are established relief may be refused if the decision would inevitably have been the same. This is sometimes referred to as "the *Simplex* principle" (or "*Simplex* test"). It was recently re-stated in authoritative terms at para. 267 of the judgment of the Court of Appeal of England and Wales (Lindblom, Singh and Haddon-Cave LJJ) in *Plan B Earth v Secretary of State for Transport* [2020] EWCA Civ 214, [2020] PTSR 1446, as follows:

> "It has long been established that, in a claim for judicial review, the court has a discretion whether to grant any remedy even if a ground of challenge succeeds on its substance. It was established by Purchas L.J. in *Simplex GE (Holdings) Ltd. v Secretary of State for the Environment* [1988] 3 P.L.R. 25 (at paragraph 42) that it is not necessary for the claimant to show that a public authority would - or even probably would - have come to a different conclusion. What has to be excluded is only the contrary contention, namely that the Minister 'necessarily' would still have made the same decision. The *Simplex* test, as it has become known, therefore requires that, before a court may exercise its discretion to refuse relief, it must be satisfied that the outcome would inevitably have been the same even if the public law error identified by the court had not occurred."[1]

It was confirmed in *R (Champion) v North Norfolk District Council* [2015] UKSC 52, [2015] 1 WLR 3710, that the *Simplex* test may be applied at the leave stage as well as when determining the substantive claim: see *per* Lord Carnwath at para. 66. It should be noted that, even where it is

[1] That passage sets out the position at common law. The Court goes on to identify the effect of the modifications to the test of inevitability introduced by legislation in the UK; but it is the common law rule which applies in the Cayman Islands.

established that the decision would inevitably have been the same, the refusal of leave is not automatic. The Court retains a discretion to grant leave, although it would for obvious reasons be exceptional for discretionary factors to justify the grant of leave where notwithstanding the arguable unlawfulness the impugned decision would inevitably have been the same.

41. In the present case the Respondents contend that even if any of the JR grounds were arguable leave to apply for judicial review fell to be refused by the Judge in accordance with the *Simplex* principle – and thus also leave to appeal should be refused by us – because the same decision would inevitably have been made by any decision-maker properly applying the law. The Applicant disputes that contention. I believe that it is right to take that question first. I note that the same course was taken by Montgomery JA: the Applicant described her as having taken a "blunderbuss" approach but what she did was entirely appropriate in principle.

(1) WAS IT INEVITABLE THAT THE COMPLAINT WOULD BE DISMISSED?

42. The principal issue under this heading is whether the Complaint raised an arguable case that Kawaley J lied in either para. 5 or para. 75 of the June judgment. I take those two paragraphs in turn.

Para. 5: What Kawaley J said about the Applicant's video-link request

43. After some introductory observations which are not relevant to the issue before us, para. 5 of the June judgment reads:

> "The Court accommodated [the Plaintiff's] request to participate in a short case management hearing via video-link, which hearing took place on January 9, 2019. He was abroad and it seemed obvious that requiring his personal attendance at a perfunctory hearing would be disproportionate in terms of the expense he would incur in travelling from Canada. How the Plaintiff would participate in the two-day hearing of the Defendant's Summons was not expressly addressed by the parties or by the Court. Shortly before the hearing fixed for May 6, 2019 with no directions having been given

> to exempt the Plaintiff from the usual requirement of personal appearance in Court, the Plaintiff formally requested permission to participate remotely."

44. Kawaley J goes on at paras. 6-9 to explain why he had denied that request, how he had conducted the substantive hearing in the Applicant's absence and what had led to the June hearing. That is mostly irrelevant to the issue before us, but I should note his explanation at para. 9 of why he had allowed the June hearing. He says:

> "In the event, I was persuaded that the Plaintiff did not appreciate that a formal application was required to exempt him from the usual requirements of attending the scheduled hearing. In all the circumstances of the present case I felt that the Plaintiff had not appreciated that his attendance was required and that I could myself have avoided any misunderstanding by expressly raising the mode of his attendance at the directions hearing."

45. In paras. 37 and 38 of the Complaint the Applicant says that para. 5 contained two (closely related) lies – (1) that the question of how he would participate in the substantive hearing had not been expressly addressed by the parties or the Court, and (2) that his attendance by video-link had only been formally requested "shortly before" the hearing. He relied on a compilation of thirteen emails between Court staff (specifically Bridget Myers, whose job title is "Personal Assistant to FSD Judges"), the HSA's solicitor (Mr Michael Wingrave of Dentons) and himself dated between 4 March and 4 May 2019, of which he attached copies as Attachment 8 (headed "Full texts of incriminating emails"). I reproduce this as an Annex to this judgment, without editing the headings given by the Applicant); and I will refer to the emails using his numbering. He also annexed to the Complaint a "Summary of incriminating emails", reproduced in the Notice of Renewal with the label "Summary of the Emails with Applicant's Commentary" ("the Commentary"). He made it clear at the start of his submissions to us that those thirteen emails constitute the "gravamen" of his case and that if they are read together with the Commentary it is arguable, to put it at its lowest (though he would put it higher), that Kawaley J lied in both respects.

46. Before turning to the emails, I should set out the formal procedure applying to requests to the Grand Court to allow parties to appear by video-link. Grand Court Practice Direction No. 2 of 2004 is

headed "Proceedings by way of Video Conferencing Civil or Criminal". Section 2 is headed "Preliminary Arrangements". Paragraphs 2.1-2.2 read (so far as material):

> "2.1. The Court's permission is required for any part of any proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer or other appropriate court officer of the intention to seek it, and should enquire as to the availability of court VCF equipment for the day or days of the proposed VCF.
>
> 2.2 The application should be made to any of the Judges of the Grand Court. If all parties consent to a direction, permission can be sought by letter, fax or e-mail, although the Court may still require an oral hearing. All parties are entitled to be heard on whether or not such a direction should be given and as to its terms. …"

47. It is the Applicant's case (a) that at the January hearing he made an oral request to attend the substantive hearing by video-link and (b) that that was later "followed up" by the email request acknowledged by Ms Myers in the first email in the Annex. Para. 21 of the Complaint reads:

> "At the hearing of 9 January 2019, I requested a videolink hearing, and the other party was asked to take instructions whether there would be any objection. I followed the request up with an email."

As regards (a) it is clear that the Applicant is referring to a definite request rather than a mere mention of a possibility: in his Notice of Renewal he describes it as "formal". In his reply submissions before us he went further and said that he had made the application against the possibility that he might not be able to attend and the Judge had given permission subject to any representations HSA might make.

48. I start with the question whether anything was said at the January hearing about whether the Applicant might wish to attend the May hearing by video-link. There is no transcript of the

hearing[2], but Kawaley J's statement in para. 5 of the June judgment that the question was not "expressly addressed by the parties or the Court", reinforced by his self-criticism in para. 9 for not having raised it himself at the January hearing, is strong *prima facie* evidence that the question was not raised at all. The Applicant's contrary account depends on the thirteen emails (read with the Commentary). I will consider these chronologically: that exercise will in practice address element (b) also. I should say that it is common ground that the emails are incomplete in at least one respect, and there may be other omissions; as a result there are some points of detail which are opaque. However, that does not matter so long as a clear picture emerges on the points relevant to whether Kawaley J lied.

49. The first email which we have is from Ms Myers to Mr Wingrave dated 4 March 2019, informing him that "the Court has received a request" from the Applicant to appear by video-link at the substantive hearing and asking him if he has any objection. The natural inference is that the request was made by email, and the Applicant confirms that that is his case. We do not have that email, which is apparently irretrievable[3], so we do not know how it was expressed. However, it was evidently of recent date (for convenience I will refer to it as "the early March email"), and the way in which it is referred to by Ms Myers strongly suggests that the request contained in it was being made for the first time: if the email had said anything to the effect that the Applicant had already made a video-link request at the January hearing, and that the HSA had been asked to take instructions but had not done so, she would almost certainly have expressed herself differently.

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2 The reason why there is no transcript is not clear. In September 2022 the Applicant made a request under the Freedom of Information Act ("FOIA") to the Judicial Administration to be supplied with video recordings of various proceedings, including the January hearing. When these were not supplied he complained to the Ombudsman, who issued a report dated 22 June 2023. The report records that the practice of the Administration was not to retain recordings of the hearings using the Zoom platform beyond the default deletion period of thirty days. The Ombudsman was critical of that practice and also of the fact that no attempt had been made to retain the recording of the most recent of the hearings in question (being the Court of Appeal hearing referred to at para. 23 above) despite the fact that the FOIA request had been made very shortly after the hearing. Although the Applicant was keen to draw those findings to our attention, they do not appear to have any bearing on the question of why there is no transcript of the January hearing, both because the complaint referred only to video recordings, and the Ombudsman says in terms that "the Applicant had been provided with audio recordings" (see para. 1 of her report), and because the routine non-retention of a recording in accordance with what was then general practice could not found any implication adverse to Kawaley J. (When we circulated a copy of this judgment in draft the Applicant pointed out that the Ombudsman's summary of his submissions (para. 24) records a statement by him that in relation to one of the hearings "not even an audio recording has been released", and he says that that was a reference to the January hearing. The Ombudsman herself makes no finding about whether an audio recording of the January hearing was retained (see para. 42 of her report), and we were shown no evidence that the Applicant has ever prior to these proceedings asked the Court for a transcript or audio recording of it. But even if he did so, and none was released, that does not begin to justify an inference that it was withheld or destroyed at Kawaley J's instance because it revealed that he had said things which undermine para. 5 of the June judgment.)

3 It might have been thought that the Applicant would have retained a copy of this email, but he told us that he has looked for it but cannot find it. (Indeed it seems that he might have lost it soon after it was sent: see the tenth email, quoted below.)

50. The following four emails comprise an exchange between Mr Wingrave and Ms Myers between 14 and 18 March 2019. In the first two Mr Wingrave asks, for reasons which do not appear, whether a response is still required, and Ms Myers tells him that it is. In the next two Mr Wingrave says that he will take instructions and then asks for a copy of the Applicant's original email, which had not been copied to him. This reinforces the impression that he had not previously been asked to obtain instructions and thus that no request had been made by the Applicant at the January hearing.

51. There is then a gap of several weeks until the sixth email, which is dated 1 May 2019 (five days before the hearing), when the Applicant asks "for arrangements to be made for a video link".[4] The same day Ms Myers replied (the eighth email[5]) saying that "video link conference is for use of 'Judge' only"[6] but that she would "forward his email to Justice Kawaley for review". In his response (the seventh email) the Applicant protested that "I did mention weeks ago that this was a *possibility* [my emphasis]". Still on the same day, having evidently heard from Kawaley J, Ms Myers communicated his request for a written explanation of the request (the ninth email). In the tenth email, dated 3 May, the Applicant begins by saying:

> "1st May, 2019 is not the first time that the *possibility* [my emphasis] of me appearing by video link was made [*sic*: no doubt he means "raised"]. Because of the tight time-line, I cannot immediately retrieve the emails concerned. Mr Wingrave and I, in e-mail copied to you as I recall, did write about the fact that *I was not sure that I would not be able to attend in person* [my emphasis], due to personal reasons."

At the end of the email, having formulated his request, he says:

> "But overall this is a very unsatisfactory way of doing things. You should have dealt with this issue when Mr Wingrave raised the matter weeks ago."

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4 The Applicant says in para. 50 of his Commentary that this was in response to an email from Ms Myers checking that he was ready for the hearing: he also asked for the June judgment to be amended to add a statement to this effect (see para. 54 below). We do not have such an email, but it is consistent with the phraseology of his email and seems plausible.

5 NB that in the Annex this is placed after the seventh email, although that appears to be later in time.

6 What Ms Myers meant by this phrase is not very clear, and at para. 51 of his Commentary the Applicant argues that it is wrong. However, that does not matter for our purposes: what matters is the Applicant's response.

52. That exchange is even more difficult than the earlier emails to reconcile with the Applicant's case that a formal video-link request had been made at the January hearing. By itself the request for "arrangements to be made" is not necessarily inconsistent with an earlier request having been made: he could have been referring only to the nuts and bolts. But what is very striking is that, when Ms Myers says that she will have to ask Kawaley J, the Applicant says only that "the possibility of me appearing by video link" was first raised by email "weeks ago", which is evidently a reference to the (lost) early March email: he does not say that a request had already been made at the January hearing and that the HSA's solicitor had been asked by the Judge to take instructions on it. But the exchange is also highly relevant to the question whether the early March email constituted a "formal request". On the Applicant's account he says only that he had "mentioned" that it "was a possibility" that he would wish to attend by video-link because he was "not sure" of his ability to attend: that does not constitute a definite, or formal, request.

53. In my view those emails are by themselves sufficient to conclusively contradict the Applicant's case both (a) that he made a video-link request at the January hearing (on which the HSA's solicitors were asked to take instructions) and (b) that he made a definite request, as opposed to raising the possibility that he might in due course do so, by email in early March 2019.

54. However, that conclusion is strongly reinforced by the terms of a correction which the Applicant asked to have made to para. 5 of the June judgment when, in accordance with the usual procedure, it was circulated to him in draft: the annotated draft was one of the documents attached to the Complaint. After the sentence ending "travelling from Canada", he asked the Judge to insert the following:

> "In mid-March 2019, the Plaintiff by email indicated that if he was not able to travel, he would request a hearing by video link. As a result of that request, Mr. Wingrave was asked by email from the court office if his client would object. Mr. Wingrave indicated that his client would have no objection. At that point the Plaintiff assumed that the hearing would be by video link."

He also asked for the following sentence to be amended so as to begin "That said, [how] …" and by removing the words "by the parties or". No changes were suggested to the final sentence (beginning "Shortly before the hearing …"), but the Applicant asked for an additional sentence to be added reading

> "This was following the court office sending email to the parties to ensure that all was in order for the hearing."

Those changes are of course wholly inconsistent with the account which the Applicant now gives of having made a formal video-link request both at the January hearing and, by way of follow-up, in the early March email (described by him as "mid-March", but nothing turns on that). The suggested correction is in fact more explicit than the tenth email because it says in terms that what the early March email indicated was that he *would* request a video-link *if* he was not able to travel. Mr Hickman described that as a "conditional" request: that is a useful shorthand, but potentially misleading if it suggests that the Applicant was making a request now in order to provide for a future possibility, as opposed to notifying the Court that he might make a request in future. A further point, albeit less directly relevant, is that the Applicant does not say that any decision had been communicated to him but only that after Mr Wingrave said that he had no objection[7] he simply "assumed" that he could attend by video-link.

55. On the basis of that analysis, it is in my view clear that Kawaley J's statements both (a) that the question "was not expressly addressed by the parties or by the Court" and (b) that the first formal video-link request was only made shortly before the hearing were entirely accurate; and accordingly no question of his having lied can arise. It is hardly surprising that his statement was accurate. The June judgment was written at a time when the sequence of events leading up to the June hearing will have been fresh in his mind, having been canvassed both with Mr Wingrave at the start of the May hearing and in the subsequent correspondence with the Applicant. His conclusion, expressed at para. 9 of the judgment, that what had happened was that the Applicant had until shortly before the hearing misunderstood that he needed to make a formal video-link request is consistent with the contemporary emails and also entirely plausible.

[7] In fact Mr Wingrave does not indicate any such consent in the emails which we have, but even if he did so in an email which has been lost or omitted it does not affect the point that the Court had given no direction.

56. I should, however, also say that even if, contrary to the foregoing, either of the two elements in the Applicant's case were established it would not follow that Kawaley J had deliberately misrepresented the position in para. 5 of the June judgment. As to (a), even if the Applicant had given an indication at the January hearing that he might wish to appear by video-link at the May hearing, that would not be inconsistent with the statement that the question had not been "expressly addressed": even on his case as stated in para. 21 of the Complaint there was nothing in writing, as required by the Practice Direction, and – quite apart from the formalities – there was no substantive discussion or decision. As to (b), even if the early March email had amounted to a formal request, there is no evidence that Kawaley J was aware of it: on the contrary, the clear implication of the eighth and ninth emails is that it was not until the beginning of May that he first became aware of any request. If that were so, he would be (on this hypothesis) mistaken but the mistake would be honest. The Applicant appears to take it for granted that all Ms Myers' emails in the Annex are based on instructions from Kawaley J; but there is nothing unusual in Court staff handling routine matters of this kind on their own initiative, with a request being referred to the Judge only when it is ready for decision. I need not develop these points further, since I do not believe that Kawaley J's statements were even arguably inaccurate in the first place.

57. That analysis addresses the main points made in the Applicant's Commentary. He does in fact make various other criticisms of Ms Myers' emails but these have no bearing on the only question before us, namely whether Kawaley J lied in the ways alleged.

58. The Applicant submitted that the fact that an analytical examination of the thirteen emails and their implications had been found necessary both by the Courts which have considered his case to date and by Mr Hickman in his submissions to us was itself a reason why the Complaint should not have been dismissed on a summary basis. If it had been allowed to proceed the JLSC could have appointed a special investigator under para. 3 (7) of the Complaints Procedure, who could have sought statements from all those concerned and could possibly also have permitted cross-examination, with a view to establishing the facts authoritatively. At para. 21 of his skeleton argument before McCarthy J he listed Ms Myers and three other members of the Court staff, together with Mr Wingrave and two other Dentons employees, all of whom wrote or were cc'd on some of the emails and said that evidence would be required from each of them. He gave us by

way of example a list of questions that he would have wished to have put to Ms Myers.[8] He also relied on a statement in para. 34 of the response of the Attorney General and the Governor to the constitutional motion (see para. 16 above), which reads:

> "The Respondents further note with considerable concern the content of the Applicant's evidence submitted by way of an affidavit sworn on 10 November 2019. His evidence appears to raise significant allegations which should be tested by way of cross-examination and with reference to relevant documents provided by way of disclosure. While it is possible for the [Court of Appeal] to hear evidence, the initial testing of evidence is generally carried out by the Grand Court which has extensive rules in place to deal with the same."

He submits that this is a recognition that his allegations – which included the allegation that Kawaley J had lied – merited detailed examination.

59. I do not believe that there is anything in this argument. The only reason why previous Courts and the Complaints Committee, and now this Court, have thought it necessary to examine the emails in detail is that the Applicant has put them at the centre of his case and it is our responsibility to judge whether they raise an arguable case that Kawaley J lied. Neither the fact that that process requires a detailed examination nor the fact that some details remain obscure precludes a finding that they do not raise such a case. As for what the respondents to the constitutional motion said in the passage quoted above, this has to be understood in the context of the issue which they were addressing, namely whether the motion should have been brought (as it was) in the Court of Appeal. Their point was that the Court of Appeal was not the proper forum for hearing, and testing, factual allegations of the kind which the Applicant was making. They were not making a point about whether all or any of those allegations raised a case which required substantial investigation. (Nor in any event were their comments specifically addressed to the allegation that Kawaley J had lied, which is indeed only barely raised in the affidavit to which they were responding.)

[8] I should note that the Applicant initially appeared to believe that if leave to appeal, and thus leave to apply for judicial review, were granted a factual investigation of the kind which he sought would be conducted by the Grand Court. However, he did not demur when the Court put it to him that that would not be the case: any such investigation would be a matter for the JLSC.

60. For those reasons I would hold that there is no basis whatever for the allegation that Kawaley J lied in para. 5 of the June 2019 judgment, and it is wholly unarguable.

61. I have thought it right to base that conclusion, as the Applicant asked us to do, squarely on the terms of the thirteen emails which he puts at the heart of his case, together with his Commentary, and to undertake a detailed analysis of their effect. However, having gone through that exercise, I feel obliged to say that it risks giving the allegation an appearance of more credibility than it deserves. The proposition that Kawaley J deliberately lied in the way alleged is in truth preposterous. No doubt it would be wrong to rule out *a priori* the possibility that a judge of the Grand Court would lie in a judgment; but it is nevertheless in the highest degree unlikely, and it could only be established by the clearest evidence. In this case the emails on which the Applicant relies do not on an objective analysis raise even the suspicion that Kawaley J was guilty of deliberate misrepresentation. I would add that there is no conceivable reason why he should have wanted to lie about the history leading to the May hearing, and still less in circumstances where his eventual decision was to accord him an opportunity to be heard in the June hearing. In fact, Kawaley J's handling of the case between the beginning of May and the middle of June conveys the clear impression that he was conscientiously attempting to see that the Applicant was not disadvantaged by his non-appearance at the May hearing, particularly after he was persuaded that that may have been the result of a mistaken assumption rather than any deliberate disregard of the rules (see para. 9 of the June judgment).

<u>The para. 75 allegation: Kawaley J's summary of the Applicant's case on the immunity point</u>

62. The immunity point is considered at paras. 56-82 of the June judgment. The central issue was whether Kawaley J should follow the earlier decision of Williams J in *Thompson v Health Service Authority* [2016 (1) CILR 93] that the effect of section 12 was to debar claims against the HSA for medical negligence: in reaching that conclusion Williams J had applied what he regarded as the literal meaning of the statute. At para. 75 he quoted a passage from the Applicant's skeleton argument summarising his case that *Thompson* was wrongly decided. He continues:

> "These summary points were then elaborated upon, primarily through statements of broad principle which do not succeed in demonstrating any serious error of approach

> in Williams J's analysis. The suggestion that the literal rule was applied in an old-fashioned and mechanistic manner is manifestly unsupportable in light of a fair and straightforward reading of the judgement in *Thompson*."

63. In para. 39 of the Complaint the Applicant asserts that the opening words of para. 75, down to "broad principle", were a "deliberate falsehood intended to falsify the judgment, mislead the Court of Appeal, and thereby make it difficult for me to meaningfully prosecute my appeal" because it failed to mention the fact that in his written submissions he had cited no fewer than 52 authorities most of which were addressed to "the plain meaning/literal rule" or other aspects of the immunity issue. In his opening submissions before us the Applicant referred us to a list of the authorities in question and asked us to record that they were indeed cited at the June hearing: that is not in issue (though it does not necessarily follow that they were material to the argument), but the question is whether Kawaley J's failure to refer to them was dishonest.

64. There is nothing whatever in this complaint. It was a matter for Kawaley J to decide in how much detail to summarise the Applicant's arguments. He had set out what he regarded as the gist of the submission, and there was no need for him to identify the authorities relied on in support of it. I am not in the least surprised that he did not think it necessary to do so, particularly in circumstances where in the end he did not decide the immunity point. The suggestion that his decision was motivated by a wish to mislead and to make an appeal more difficult is absurd: apart from anything else, even if an appeal on this issue had been possible the Applicant would have been able to cite the authorities in the Court of Appeal and, if he wished, to criticise the Judge's failure to refer to them.

65. For completeness, para. 40 of the Complaint asserts a second lie in para. 75, equally groundlessly; but the JR grounds do not refer to it and we heard no submissions about it, so I need not say anything more about it.

Conclusion

66. It follows from the foregoing that on a proper application of the Complaints Procedure the Complaint would inevitably have been summarily dismissed as falling within at least one, and in

my view all, of heads (c)-(e) under paragraph 3 (2). In the light of the history summarised at paras. 15-24 above the Complaints Committee understandably also invoked head (f) – that is, that the Complaint "raise[d] a matter which has already been dealt with". The Applicant disputes that that head applied, essentially because he says that the issues considered by the various previous Courts were not the same as those raised by the Complaint. I do not accept that. Although the specific legal contexts were different, each of them included the allegation that Kawaley J lied in the June judgment, and, as we have seen, Martin JA and subsequently the full Court of Appeal considered and rejected that specific allegation. However, it is unnecessary to consider the point in detail since heads (c)-(e) unquestionably apply.

(2) THE EFFECT OF *SIMPLEX*

67. Subject to para. 69 below, the *Simplex* principle means that the effect of my conclusion under the previous head is that it is unnecessary to consider whether the specific challenges pleaded in the original JR grounds are arguable: even if any of them was well-founded the same decision would inevitably have been taken. That conclusion is not particularly significant as regards the grounds which I have summarised at para. 32 (1) above, since I have had to consider their substance in any event, and it necessarily follows from my reasoning above that they are unarguable. But it is significant for the remaining grounds summarised at para. 32 (2)-(4) because it means (again, subject to what I say below) that they would not need not be considered at all.

68. The Applicant at first appeared to submit that the circumstances of the present case were different from those applying in the cases where the *Simplex* principle has been applied. He referred us in particular to the facts of the *Champion* decision. But in the end his submissions came down to emphasising that the test was one of inevitability and that it could not be satisfied in circumstances where it was essential that a full factual investigation should be carried out. That is a submission which I have already addressed.

69. However, as noted at para. 40 above, the *Simplex* principle does not amount to an absolute rule that leave must be refused on an arguable ground if the decision would inevitably have been the same: even in such a case the Court retains a discretion to grant leave. In the present case the only possible reason for taking that course would be if any of the remaining grounds raised arguable points which

there is a public interest in having definitively decided even though they could not affect the outcome of the Complaint. I do not believe that that is the case. I take the groups of grounds identified at para. 32 (2)-(4) in turn.

70. *The identity of the decision-maker.* This is the group of grounds for which the Applicant principally contended that we should grant leave even if they could not lead to the quashing of the decision to dismiss his Complaint. He submitted that they raised an arguable constitutional question of general importance about the operation of the Complaints Procedure on which it would be of value to have the Court's answer.[9] I would not give leave on this basis. I do not believe that these proceedings should be prolonged any further in circumstances where the underlying complaint has no merit and where the resources of the Court have already been wasted on a series of other cases raising the same and other equally groundless related complaints. The question, assuming it to be arguable, is better raised in a case where it makes a real difference to the outcome and where it will not come accompanied by a distracting miasma of other allegations. That being so, I see no advantage in seeking to decide whether the point is in fact arguable. To do so would require a detailed examination of the Complaints Procedure and the provisions of section 106 of the Constitution (both in its original form and as amended), about which we heard quite elaborate submissions: that exercise is not justified in circumstances where I would refuse leave in any event.

71. *The Procedure under the Complaints Rules.* The main point raised by these grounds is that there should have been an oral hearing of the Applicant's Complaint, at which he would have had the opportunity to call and cross-examine witnesses. But that is unarguable if, as I would hold for the reasons already given, the material relied on by him did not raise a case that required full investigation. The Applicant also complains that there is no record of who the members of the Complaints Committee that recommended the dismissal of his Complaint were and that its recommendation is not signed or otherwise authenticated. Even if either point were arguable, they are not of a character to justify the exercise of a discretion to grant leave where the *Simplex* principle is engaged. However, I am prepared to say that I do not believe that they are arguable.

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9 In view of some observations made by the Applicant when this judgment was circulated in draft, I should emphasise that the primary question raised by his challenge is whether the effect of the relevant provisions of the Constitution is that a decision under paragraph 3 of the Complaints Procedure is properly to be taken by the Committee or by the Chief Justice. It is only if the latter is the case that the question arises as to whether, on the true construction of her letter of 15 February 2024, the decision to dismiss his Complaint was indeed taken by her.

There is no suggestion that the Applicant ever asked to have the members of the Committee identified. Nor is there any requirement for any particular form of authentication: the Chief Justice's letter is sufficient evidence that the recommendation which it encloses is genuine.

72. *Bad faith.* These grounds are ancillary to, and dependent on, the Applicant's case that the Complaint against Kawaley J was well-founded, or in any event arguable. He says that in those circumstances it can be inferred that the Respondents acted in bad faith by summarily dismissing it. Since I do not accept that the premise is arguable, the inference from it is equally unarguable. In his skeleton argument before McCarthy J the Applicant sought to bolster the allegation of bad faith by referring to a finding of the Ombudsman that the JLSC had been guilty of maladministration in failing to update the Complaints Procedure in order to reflect the changes made to the Constitution by the 2016 Order (see para. 32 (1) above); and he referred us to the same finding. However, that is not a finding of bad faith, and in any event it cannot support an allegation of bad faith as regards the dismissal of the Complaint in the present case.

CONCLUSION ON LEAVE TO APPLY FOR JUDICIAL REVIEW

73. For those reasons I conclude that McCarthy J was right to refuse leave to apply for judicial review. Most of the Applicant's pleaded grounds, including the central grounds challenging the decision to dismiss his Complaint, were unarguable; but in so far as any may have been arguable that would not justify the grant of leave since the decision would inevitably have been the same in any event.

(B) THE GROUNDS OF APPEAL

74. As explained at para. 36 above, although the Applicant's primary case is, correctly, concerned with whether leave to apply for judicial review should have been given, his pleaded grounds of appeal do not focus on that question but rather raise a number of complaints about McCarthy J's conduct of the proceedings below or particular details of his reasoning. I am not entirely sure what relief this Court could give if any of those complaints were established, or therefore whether it would be proper to give leave if they appear arguable. But the most straightforward course is to consider first whether any of them are in fact arguable.

GROUNDS 1-3

75. For reasons which will appear it is convenient to take grounds 1-3 together. They read:

> "Ground 1: Justice McCarthy erred in law when he failed to first decide the preliminary issues that had been raised, namely (a) whether the Attorney General should have been allowed to make written submissions at the ex parte stage; (b) whether to follow Justice Kawaley's decision that an application for leave to bring judicial review proceedings must be kept out of the Register of Writs and Originating Process.
>
> Ground 2: In supporting my argument that the AG should not be allowed to make written submissions, I cited the Cayman Court of Appeal case of *Smith v Commissioner of Police* (1980-83) CILR 126. The judge decided that this was distinguishable since in that case the Commissioner of Police had attended court without the court's permission and in the case at hand the AG was allowed by the court to make submissions. That distinction does not hold water.
>
> Ground 3: The judge failed to give any reason as to why he thought that he did not need to decide the issue as to whether my filed proceedings should have been placed on the open Register of Writs and Other Originating Process."

Each is followed by some supporting text.

76. It will be seen that the structure of those grounds is that grounds 2 and 3 challenge the Judge's rulings on two procedural questions which the Applicant characterises as "preliminary issues" – namely (2) whether the Respondents should have been allowed to make written submissions and (3) whether the application for leave to appeal should have been placed on the Register (though, as will appear, this in fact raises a rather wider point); and that ground 1 challenges his decision not to rule on those issues before hearing the leave application. It makes sense to address grounds 2 and 3 first.

Ground 2: Entertaining written submissions from the Respondents

77. The procedure for making an application to the Grand Court for judicial review is contained in GCR 53. Rule 3 (1) provides that that no application for judicial review shall be made unless the leave of the Court has been obtained in accordance with the rule. Rule 3 (2) provides that an application for leave must be made *ex parte*.

78. In the present case, although, in accordance with GCR 53 r. 3 (2), the application for leave was not formally served on the Respondents, they became aware of it because the case management hearing of the judicial review application was listed in the cause list. The precise circumstances are contentious, but the Respondents have produced an email dated 22 July 2024 from the Attorney General's chambers (in fact from Ms Walker) to the Court office saying that they had seen the listing and that the Respondents would like to make written submissions on the leave application: the email asks for the application to be drawn to the Judge's attention. As noted at para. 33 above, McCarthy J gave directions permitting the Attorney General to file written submissions in response, and he took those submissions into account in reaching his eventual decision.

79. It was the Applicant's case that McCarthy J was wrong to entertain submissions from the Respondents at the leave stage. At paras. 37-39 of his judgment, the Judge summarised Mr Hickman's response to that contention as follows:

> "37. Mr. Hickman submits that the fact under the Grand Court Rules that an application for judicial review "*must be made ex parte to a judge*" does not mean the judge must determine the matter on an ex parte basis. Mr. Hickman points out that the case **Smith v Commissioner of Police (1980-83) CILR 126** (**Smith**), 134-35 predated the overriding objective which now governs the Grand Court Rules, which require that cases be determined in a just, economic and efficient manner.
>
> 38. Mr. Hickman also cites recent cases in which the court has determined leave applications inter partes (see: **Kruger v Governor 1997 CILR 73**, page 89; **Powell & Rowe v Attorney General** [2009] CILR 298; **BDO Cayman Ltd and Others v Governor and Attorney General** referred to in ruling of Mangatal J in **G168 of 2016**.)

Moreover, Mr. Hickman cites the following passage from **Anglin v Governor of Cayman Islands**:

> '*It is always open to a judge at the leave stage of an application for judicial review to invite the Respondent to attend and make submissions. Had that happened here it may well be that these proceedings, conducted, as I understand it, entirely at the public expense, would have stopped at the outset*.'

39. Mr. Hickman submits that there were several factors that warranted that the respondent be given an opportunity to respond to the application. These include the following:

(a) serious allegations are raised (including unconstitutional conduct, bias and bad faith);

(b) there are numerous and varied grounds of judicial review raised, and the court may as a result, benefit from the assistance of submissions of the respondent;

(c) the applicant did not comply with the pre-action protocol for judicial review."

He gave his conclusion at paras. 48-56 as follows:

"48. One of the matters that Mr. Simamba objected to was my decision to permit counsel for the respondents to make written submissions with respect to the application for leave for judicial review. Mr. Simamba submitted that the proposed respondents had no right under law to make written submissions or to appear at the hearing.

49. Interestingly, when the matter was raised at the directions hearing Mr. Simamba had said that he had no objection to the written submissions provided he was given an oral hearing in open court.

50. Mr. Simamba cited the case of **Smith v Commissioner of Police (1980-83) CILR 126** (**Smith**), a decision of the Cayman Islands Court of Appeal where the Court of Appeal cited a Trinidad and Tobago case where the application for leave was inadvertently served on the Attorney General who was the intended respondent. In the case the Judge entertained the arguments of the Attorney General despite the protestations of the applicant. The Court of Appeal held that the Attorney General had no right to be there until the matter had passed the leave stage.

51. In the instant case, counsel for the 1st to 7th respondents sought and obtained permission to make written submissions. As I understand it, inadvertently, the matter was listed among the several inter partes court matters, and as a result, the respondents were named and became aware of it. It was because of this that they sought permission to make written submissions. In his written Submissions, Mr Simamba alleged that 'the Attorney General injected himself into an ex parte hearing' without stating any special reason. In this regard, Mr Simamba is incorrect; I have received no requests from the Attorney General, and that office has not participated in any part of these proceedings.

52. GCR 53 is in substantially similar terms to the English Order 53 which was introduced in England in 1977 (see the White Book 1997 Edn. paragraph 53/ 1-14/1).

53. As early as 1982 in **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd. [1982] A.C. 617, 632** Lord Diplock considered the "new" Order 53 and described the procedure in the following way:

> 'The procedure under Order 53 involves two stages: (1) the application for leave to apply for judicial review and (2) if leave is granted, the hearing of the application itself. The former or 'threshold' stage is regulated by rule 3. The application for leave to apply for judicial review is made initially ex parte, **but may be adjourned for the persons or bodies against whom relief is sought to be represented.**' (**My emphasis**)

54. A similar view is expressed by Lord Donaldson M.R. in **R v Secretary of State for the Home Department, ex p. Begum C.O.D. 107, 108** (see also the White Book 1997 edn. para 53/1-14/30 where the following is stated under the rubric: '**Leave to apply for Judicial Review**':

> 'If, on considering the papers, the judge cannot tell whether there is, or is not, an arguable case, he should invite the putative respondent to attend the hearing of the leave application and make representations on the question whether leave should be granted.'

55. In this jurisdiction a similar approach has been adopted and has gained the approval of the Court of Appeal where it has been stated recently that:

> 'It is always open to a judge at the leave stage to invite the respondent to attend and make submissions.' (see **CICA (Civil) Appeal No 6 of 2022 – Anglin and Governor of Cayman Islands et al** para. 70 of judgment delivered by **The Rt. Hon. Sir John Goldring, President**).

56. Finally, it should be noted that **Smith** is distinguishable from the instant case. In **Smith**, the respondent attended the leave hearing without obtaining permission from the Court. In this case counsel for the 1st to 7th respondents sought and obtained permission from the Court to make written submissions."

80. As will be seen, ground 2 is concerned only with the Judge's treatment of *Smith*. However, I have set those passages out in full because I should say that I am satisfied that the Judge's decision to entertain submissions from the Attorney General is unimpeachable for the reasons that he gave, which essentially corresponded to Mr Hickman's submissions as recorded by him. The Applicant's objection to what was plainly a sensible case management decision, fully in line with both English and Cayman authority, was completely misconceived.

81. As for *Smith*, I need only say that the distinction relied on by the Judge at para. 56 is in my view plainly correct, and I can see no basis for the submission that it does not "hold water".

Ground 3: Open justice

82. As noted at para. 34 above, the hearing of the application for leave took place in chambers and not in open Court. That was in accordance with GCR 53 r. 3 (3), which reads:

> "The Judge may determine the application without a hearing, unless a hearing is requested in the notice of application, *and need not sit in open Court* [my emphasis] …"

83. The Applicant's case that the hearing should be in open Court was based primarily on section 7 of the Constitution ("Fair Trial"), the relevant parts of which read:

> "(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.
>
> (2)-(8) …
>
> (9) All proceedings instituted in any court for determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.
>
> (10) Nothing in subsection (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court-
>
> (a) may be empowered by law to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, *or in interlocutory proceedings* [my emphasis], or in the interests of public morality, the welfare of minors or the protection of commercial confidence or of the private lives of persons concerned in the proceedings; or

(b) may be empowered or required by law to do in the interests of defence, public safety, or public order."

He submitted that the effect of those provisions was that GCR 53 r. 3 (3) was unconstitutional. He also relied on GCR 32 r. 13 (1), which gives a Judge in Chambers the power to direct that any application "shall be heard in Court or shall be adjourned into Court to be so heard if the Judge considers that by reason of its importance or for any other reason it should be so heard".

84. The Judge gave his reasons for proceeding in chambers as part of his judgment on the substance of the application. As regards the constitutionality of GCR 53 r. 3 (3) he said, at paras. 61-62:

"61. Even on the extract from the Cayman Constitution referred to by Mr. Simamba it is clear that the Judge, as provided for in order 53(3) need not sit in open court.

62. The application for leave is a mere filter to eliminate those cases which are frivolous, vexatious and without merit. This has been the law and practice for decades. The Constitution recognises this and the applicant's arguments to the contrary are without merit."

As regards GCR 32 r. 13 he said, at para. 64:

"The above provision merely confers a discretion on the judge to hear a matter in Court as opposed to chambers on account of its importance or for any other reason. Certainly, I am aware that it is open to the court even at the leave stage, to have a hearing in open court, but I am of the view after considering all the facts, that it is not justified in this case."

85. That debate related to the hearing itself. However, the Applicant also made a distinct submission to McCarthy J that an application for judicial review falls under the description "originating process" and should therefore have been placed on the Register of Writs maintained by the Court in accordance with GCR 62 r. 8, but that that had not occurred. That was in accordance with the

current practice in the Cayman Islands, the lawfulness of which had been upheld by Kawaley J in *In the matter of an application for a confidentiality order* (cause no. 30 of 2019); but the Applicant submitted that that decision was wrong and that the practice was in fact unlawful. I refer to this as "the public register point". The Judge declined to determine it because he said that he did not consider it material: see para. 25.

86. Ground 3 on its face only challenges the Judge's decision on the public register point, and that is confirmed by the following text, which simply asserts that he was wrong to find that the question was not material because "[m]y constitutional rights were violated by not placing my application on the public register". But the waters are muddied by the pleading of ground 1. Although the ground itself, consistently with ground 3, refers only to the public register point, the second paragraph of the following text reads:

> "By deciding the two matters above together with the merits of the matter, the judge denied me an opportunity to appeal his rulings on both counts. As a result, my rights pertaining to both matters have been infringed. The Attorney General has been allowed to oppose my matter prematurely, turning the matter into an inter partes matter without good reason. But more egregious is that the matter has not been determined on the merits *all in secret* [emphasis in original] in violation of my rights under section 7 of the Constitution (open justice, fair trial). My filed documents are not on the public register and the public was denied the opportunity to witness my proceedings."

That paragraph clearly raises the issue which was raised before the Judge as to whether the hearing should have been in open Court. It was so understood by the Respondents, who made submissions in support of the Judge's reasoning in their Response; and the point was argued before us. Given that the Applicant, despite his legal qualifications, is a litigant in person, I think that we should address the substance of the issue despite the unsatisfactory way in which it is pleaded.

87. I start with the submission that GCR 53 r. 3 (3) is unconstitutional. The Judge rejected that submission on the basis that section 7 (10) of the Constitution itself provides for derogations from the requirement that hearings be in public. Although he does not specify the particular derogation

on which he relies, in para. 22 of the Respondents' Response to the application for leave to appeal Mr Hickman and Ms Walker submit that the reference is to the exclusion of interlocutory proceedings. "Interlocutory proceedings" are not defined in the Constitution itself nor were we referred to any definition in the GCR. However, it is well established as a matter of common law that a hearing is to be treated as interlocutory (as opposed to final) unless the outcome will necessarily determine the relevant matter one way or the other: that is reflected, for example, in rule 12 (3) of the Court of Appeal Rules. On that basis an application for leave to apply for judicial review is plainly interlocutory, since it will be determinative of the application for judicial review only if leave is refused.

88. In his Reply to that Response the Applicant appears to accept that the Court "need not sit in open Court" but submits that it retains a discretion to do so and that that discretion must be exercised "in a manner that is 'lawful, rational, proportionate and procedurally fair' as per section 19 of the Constitution". That raises in substance a challenge to the Judge's exercise of his discretion under GCR 32 r. 13. However, the Applicant does not identify any reason for impugning the Judge's exercise of that discretion, and I am satisfied that it was indeed lawful. It is material to bear in mind not only that the hearing was interlocutory in nature, for the reason given above, but also that it was not *inter partes* – that is, the Respondents did not appear – and that the Judge gave a full judgment which is on the public record. As regards the latter point, the Applicant submits that a failure to hold a public hearing cannot be cured by the fact that the subsequent judgment is public. That may be so, but it does not follow that the availability of such a judgment is not a material consideration in exercising a discretion whether to direct that a hearing which would otherwise be held in chambers should take place in open Court.

89. I do not therefore believe that it is arguable that the Judge erred in law in conducting the hearing in chambers.

90. That leaves the public register point. I agree with the Judge that that point was not material to the application for leave in itself and that it was accordingly not an error of law for him to decline to decide it. In the course of his reply submissions before us the Applicant acknowledged that a failure to place the proceedings on the register would not impugn the judgment itself.

Ground 1: Should the preliminary points have been decided first?

91. Since I would hold that both the Applicant's preliminary points were ill-founded, the question whether the Judge should have formally ruled on them before proceeding to hear the substantive application is academic. The Applicant sensibly said in the course of his submissions before us that he was not really pressing this point.

92. For the record, however, I can see nothing wrong in the course that the Judge took, as explained at para. 65 of his judgment:

> "At the oral hearing, Mr. Simamba asserted that the two (2) aforementioned preliminary issues must be ruled upon before any other issues could be addressed, including the application for leave. I rejected his submission because it appears to me that the responsibility falls squarely under the case management powers of the court, under the GCR. Moreover, it would be a waste of judicial time to adjourn the matter, as he suggested, to deal with preliminary issues which could be dealt with in rendering the decision on the application for leave."

The fact that he declined to give a formal ruling at that stage meant both that the hearing was not going to proceed in open Court and also that the Applicant would in practice have to take the Respondent's written submissions into account when making his own oral submissions. It follows that the Applicant's real complaint can only be that the Judge did not give a formal reasoned ruling before proceeding with the substantive hearing. That was plainly sensible: when a judge makes a case management decision in the course of a hearing it is generally a better use of time to defer giving reasons until the final judgment. The Judge was obviously right to refuse to adjourn the substantive hearing and deal only with the preliminary issues: as he says, that would have been wasteful and unnecessary.

GROUNDS 4-6

Ground 4

93. I can take this very shortly. The Applicant asserts that the explanation given by the Judge as to how the Respondents became aware of the listing of the original *ex parte* hearing – as to which see para. 51 of his judgment, quoted at para. 78 above – is a lie. He says that the supposedly inadvertent mistake had in fact been deliberate and was the result of a conspiracy between the Chief Justice, the Judge and the Attorney General to create an opportunity for the Respondents to apply to intervene. This is a fantastical allegation for which he produces no evidence whatever. He claims that the Judge's phrase "as I understand it" betrays that he had received a private communication from the Chief Justice. However, the obvious explanation is that he was told what had happened at the time that the Attorney General first made the application; and that is confirmed by the email referred to at para. 78 above.

Ground 5

94. This reads:

> "As litigant in person and not really a litigation lawyer, I had some Caymanian friends who attended as my McKenzie friends. The Judge ordered them to be disconnected."

The following text reads:

> "I had friends who attended to assist me in the course of the matter. The judge disconnected them without notice. I brought this to this attention in the course of the hearing and it is on tape. He said that I did not need a McKenzie friend. This was directly in contravention of Practice Direction No. 7 of 2022, para (8), which makes it clear that the mere fact that a person 'the personal litigant appears capable of conducting the case without assistance' is not a reason to deny him a McKenzie friend. More importantly, I was really hampered especially that this happened about half-way through the hearing."

95. It is impossible on the available material to know exactly what happened in the incident to which the Applicant refers. The Respondents were not present, and the Applicant has not asked for a copy of the tape referred to. I am bound to say that I should take some persuading that if the Judge did indeed take a positive decision to disconnect the individuals in question he did so without some cause. Further, to the extent that the Applicant was hampered in presenting his case, his remedy is that the grounds of judicial review have been fully reconsidered by this Court. When we put the latter point to him in the course of the hearing before us he chose not to develop the point further. In those circumstances I need only say that he has not shown arguable grounds that he suffered any injustice as a result of the Judge's decision.

Ground 6

96. This ground challenges observations made by McCarthy J in paras. 69 and 102 of his judgment to the effect that the matters raised by the Complaint had already been considered and decided in the earlier proceedings. I believe those observations to be justified: see para. 66 above. But in any event a criticism of a particular element in the Judge's reasoning does not assist the Applicant since we have undertaken our own assessment of the JR grounds.

CONCLUSION ON THE GROUNDS OF APPEAL

97. For those reasons the complaints made in the Grounds of Appeal which go beyond re-asserting the original JR grounds are not arguable, and it is accordingly unnecessary to consider what the effect would have been if they were.

DECISION AND CONCLUDING OBSERVATIONS

98. For those reasons I would refuse leave to appeal.

99. I wish to say in conclusion that, although the Applicant appears sincerely to believe that his allegations against Kawaley J are well-founded, and that the decision to dismiss the Complaint was not only irrational but taken in bad faith, there is no objective basis whatever for that belief or therefore for his belief that the repeated rejection of those allegations shows that the entire judicial

establishment of the Cayman Islands is prejudiced against him. Litigation arising from those beliefs has already occupied the time of the Courts for far too long, and its obsessive pursuit cannot be good for the Applicant either. He has now had the benefit of a two-day hearing before a Court whose members have no connection with this jurisdiction and a judgment which seeks to address all of the principal points which he has raised. It may be too much to hope that he will now accept that his beliefs are ill-founded; but I do venture to hope that he will at least accept that he has come to the end of the road.

Sir Stephen Irwin, JA

100. I agree.

Sir Patrick Elias, JA

101. I also agree.

ANNEX

Attachment 8 to the Applicant's Original Complaint

Contents

1st email: Bridget Myers acknowledging request for video-link hearing from Simamba.

--------- Forwarded message ---------
From: Bridget Myers <Bridget.Myers@judicial.ky>
To: "Wingrave, Michael" <michael.wingrave@dentons.com>
Cc: Yasmin Ebanks <Yasmin.Ebanks@judicial.ky>
BCC:
Date: Thu, 4 Mar 2019 17:28:23 +0000
Subject: RE: Simamba v HSA - Cause No 32 of 2014
Dear Mr Wingrave

In relation to the upcoming 2 day trial, the Court has received a request from the Plaintiff for him to participate remotely via video-link. Therefore, can you please confirm to the court whether or not you have any objections to this request?

Many thanks

Bridget Myers
Personal Assistant to FSD Judges
Judicial Administration
61 edward Street, George Town
P.O. Box 495, Grand Cayman KY1-1105, Cayman Islands
Direct Tel: (345) 244-3890 and Fax (345) 949-5968

---END---

2nd email: Wingrave asking court whether it still needs his view on Simamba appearing by video-link.

From: Wingrave, Michael [mailto:michael.wingrave@dentons.com]
Sent: Thursday, March 14, 2019 1:13 PM
To: Bridget Myers <Bridget.Myers@Judicial.ky>
Cc: Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>
Subject: RE: Simamba v HSA - Cause No 32 of 2014

Dear Ms Bridget,

I assume you no longer require me to give a view on Mr Simamba's appearance by videolink.

Kind regards,

Michael

Michael Wingrave
Partner - Head of Litigation

D +1 345 745 5007
michael.wingrave@dentons.com
Bio | Website

Dinner Martin Attorneys
P.O. Box 10190, 3rd Floor, One Capital Place, George Town, Grand Cayman, KY1-1002, Cayman Islands

---END---

3rd email: Court confirms that it will still need Wingrave's view on Simamba appearing by video-link.

From: Bridget Myers <Bridget.Myers@Judicial.ky>
Sent: Thursday, March 14, 2019 1:21 PM
To: Wingrave, Michael <michael.wingrave@dentons.com>
Cc: Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>
Subject: RE: Simamba v HSA - Cause No 32 of 2014

Mr Wingrave, please do.

---END---

4th email: Wingrave informs Court that he will take instructions on Simamba's request to appear by video-link.

From: Wingrave, Michael
Sent: Thursday, March 14, 2019 1:25 PM
To: 'Bridget Myers' <Bridget.Myers@Judicial.ky>
Cc: Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>
Subject: RE: Simamba v HSA - Cause No 32 of 2014

Dear Ms Bridget,

Thanks for your email.

I will take instructions from my client and revert. I do note, however, that we have had significant connection problems on both of the last two hearings at which Mr Simamba appeared by video-link.

Kind regards,

Michael

---END---

5th email: Wingrave asks Court for copy of Simamba's request to appear by video-link.

From: Wingrave, Michael [mailto:michael.wingrave@dentons.com]
Sent: Monday, March 18, 2019 8:25 AM
To: Bridget Myers <Bridget.Myers@Judicial.ky>
Cc: Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>; Bilika Simamba <bhsimamba@gmail.com>
Subject: RE: Simamba v HSA - Cause No 32 of 2014

Dear Ms Bridget,

I am nearly there with obtaining instructions on this issue. Would it be possible to have a copy of Mr Simamba's request to the Court, please? I understand that he intended us to be copied upon the same, but inadvertently left us off the correspondence.

Kind regards,

Michael

Michael Wingrave
Partner - Head of Litigation

D +1 345 745 5007
michael.wingrave@dentons.com
Bio | Website

Dinner Martin Attorneys
P.O. Box 10190, 3rd Floor, One Capital Place, George Town, Grand Cayman, KY1-1002, Cayman Islands

---END---

6th email: Simamba reiterates request for video-link hearing.

From: Bilika Simamba [mailto:bhsimamba@gmail.com]
Sent: Wednesday, May 01, 2019 1:23 PM
To: Wingrave, Michael <michael.wingrave@dentons.com>
Cc: Bridget Myers <Bridget.Myers@Judicial.ky>; Jenesha Simpson <Jenesha.Simpson@Judicial.ky>; Shiona Allenger <Shiona.Allenger@Judicial.ky>; Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>; Dube, Sylvester <sylvester.dube@dentons.com>; Connolly, Olivia <Olivia.Connolly@dentons.com>
Subject: Re: Bilika Simamba v HSA G32 of 2014

Bridget,

I have not received any notice that the bundles were delivered or where they could be collected.

I should be grateful for arrangements to be made for a video link. I will argue it my video link. But will still of course need the bundles to be picked up.

Also, I would like to have, at the very least, an audio of it for me to copy after the proceedings, if a video copy is not possible.

Bilika Simamba
Plaintiff in Person

---END---

7th email: Simamba requests for legal authority regarding proposition that video-link is for use of "Judge" only.

Sent: Wednesday, May 01, 2019 3:04 PM
To: Bridget Myers <Bridget.Myers@Judicial.ky>
Cc: Wingrave, Michael <michael.wingrave@dentons.com>; Jenesha Simpson <Jenesha.Simpson@Judicial.ky>; Shiona Allenger <Shiona.Allenger@Judicial.ky>; Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>; Dube, Sylvester <sylvester.dube@dentons.com>; Connolly, Olivia <Olivia.Connolly@dentons.com>
Subject: Re: Bilika Simamba v HSA G32 of 2014

What do you mean and what is the authority for that. I did mention weeks ago3that this was a possibility

---END---

8th email: Myers informs Simamba that video-link is for use of "Judge" only.

On Wed., May 1, 2019, 3:43 p.m. Bridget Myers, <Bridget.Myers@judicial.ky> wrote:
Dear Mr Simamba

Please be advise that video link conference is for use of "Judge" only. I will however, forward your email to Justice Kawaley for review and revert once I am in the position to do so.

Many thanks

Bridget Myers
Personal Assistant to FSD Judges
Judicial Administration
61 edward Street, George Town
P.O. Box 495, Grand Cayman KY1-1105, Cayman Islands
Direct Tel: (345) 244-3890 and Fax (345) 949-5968

---END---

9th email: Myers requests Simamba to write letter specifying reasons for his video-link hearing request.

From: Bridget Myers
Sent: Wednesday, May 01, 2019 5:05 PM
To: 'Bilika Simamba' <bhsimamba@gmail.com>
Cc: Wingrave, Michael <michael.wingrave@dentons.com>; Jenesha Simpson <Jenesha.Simpson@Judicial.ky>; Shiona Allenger <Shiona.Allenger@Judicial.ky>; Yasmin Ebanks <Yasmin.Ebanks@Judicial.ky>; Dube, Sylvester <sylvester.dube@dentons.com>; Connolly, Olivia <Olivia.Connolly@dentons.com>
Subject: RE: Bilika Simamba v HSA G32 of 2014
Importance: High

Dear Mr Simamba

Before His Lordship can consider your request to appear via video link, can you please provide the Courts by way of letter with the justified reason as to why you cannot appear in person to participate in the proceedings?

As to your question, I refer you to please review Practice Direction 2/2004.

Many thanks

Bridget Myers
Personal Assistant to FSD Judges
Judicial Administration
61 edward Street, George Town
P.O. Box 495, Grand Cayman KY1-1105, Cayman Islands
Direct Tel: (345) 244-3890 and Fax (345) 949-5968

---END---

10th email: (1). Simamba queries why Court is raising new issues at the last minute regarding his previous request for a video-link hearing. (2). Simamba informs Court that he is not feeling well.

From: Bilika Simamba <bhsimamba@gmail.com>
Sent: Friday, May 3, 2019 3:47 PM
To: Bridget Myers <Bridget.Myers@judicial.ky>
Cc: Wingrave, Michael <michael.wingrave@dentons.com>; Jenesha Simpson <Jenesha.Simpson@judicial.ky>; Shiona Allenger <Shiona.Allenger@judicial.ky>; Yasmin Ebanks <Yasmin.Ebanks@judicial.ky>; Dube, Sylvester <sylvester.dube@dentons.com>; Connolly, Olivia <Olivia.Connolly@dentons.com>
Subject: Re: Bilika Simamba v HSA G32 of 2014

Bridget,

1st May, 2019 is not the first time that the possibility of me appearing by video link was made. Because of the tight time-line, I cannot immediately retrieve the emails concerned. Mr. Wingrave and I, in email copied to you as I recall, did write about the fact that I was not sure that I would be able to attend in person, due to personal reasons. Since then, I was under the impression that we were proceeding on that basis. Besides, without taking a second look due to time-constraints again, I did not understand that the purpose of your email was for me to provide exceptional circumstances.This is rather late in the day for you to now raise these fundamental issues.

Also, it is not clear from your emails if the judge is expected to be in Cayman.

By the way, I have not received or received notice of my bundles despite sending a reminder a few days ago. Also, the core bundle does not seem to have my Response to the Defendant's arguments. The 2 documents that appear to be missing are attached. That notwithstanding, I am ready to argue the matter.

That said, there are exceptional circumstances.

First, I did warn Justice Mangatal about the fact that as a party who is not represented, and some personal matters what were developing on my part, it was important that the matter be ruled upon. I have this in writing or by email. She ignored it. That notice must be ascribed to the judiciary.

Second, I did apply for legal aid, but this was rejected a while back.

Third, this matter had to be assigned to Justice Kawaley because it was originally set for hearing in September 2015. Due to recusal by Justice Panton, it was assigned to Justice Mangatal who heard it on 3rd December, 2015 and promised a ruling for the first quarter of 2016. She failed to deliver the ruling and kept changing the reasons why she could not deliver the ruling.

Fourth, there are constitutional issues involved here. I have been forced into this position because a judge violated my rights under section 7 to have a hearing within a reasonable time. Practice Direction 1 of 2012 says that rulings had to be given within 2 to 3 months and we were approaching 3 years without any end in sight. She had promised a ruling within the first quarter. (See para 2 of her ruling of 19th July,

2019). In fact, we are now about 3 years and 7 months since it was first fixed for hearing and 3 years 4 months from the date when it was first heard.

Fifth, this matter is in the public domain and there are members of the press who are waiting to see how the issue of delay and the substantive matter is going to be handled. Unduly complicating it at this stage will not be good for anyone.

In the circumstances, I would ask for the judge to reconsider whether we can still have this by video link. If this is not acceptable, I would be happy to address him by video link for only about 2 hours just to give an outline of my arguments if this will satisfy him. In any case, I believe that I can still rely on my submitted documents and ask for a ruling on that basis. If it is necessary for me even to speak by video link for only for 5 minutes to formally put my documents in that will be fine.I am sorry that since I am away from my research materials and am not feeling very well, I cannot give the judge any authority for this.

But overall this is a very unsatisfactory way of doing things. You should have dealt with this issue when Mr. Wingrave raised the matter weeks ago.

Bilika Simamba

---END---

11th email: Myers informs Simamba that his request for a video-link hearing is denied.

On Fri, May 3, 2019 at 4:05 PM Bridget Myers <Bridget.Myers@judicial.ky> wrote:
Dear Mr Simamba

Further to my email below, as you are no doubt aware, the usual rule is that parties to proceedings before the courts either appear in person or through their legal representative. The only established exception is for part-time judges who are resident overseas to participate in essentially procedural hearings via video-link.

Exceptions can be made for short directions hearings when the necessary arrangements are put in place well in advance of the relevant hearing. For example, when directions were ordered in this case at a hearing which lasted less than 1 hour, you were permitted as a courtesy to participate remotely. You did not request a similar indulgence when the substantive hearing was fixed. As a result, the feasibility of such participation was not investigated and the necessary technical arrangements have not been (and cannot now be) put in place.

On May 1, 2019, less than a week before the hearing which was fixed several weeks ago for a 2 day hearing commencing May 1, 2019, you asked whether you could participate remotely without offering any explanation for why the usual requirements for attendance should be departed from. You were requested by return email to provide a basis for this request and have furnished none.

The Judge has requested me to inform you, for the avoidance of doubt, that in light of your failure to advance any reasons why the Court should take the exceptional (and probably unprecedented) step of allowing you as a party to participate in a two day substantive hearing by video-link, Monday's hearing will proceed on the usual basis. "

Many thanks

Bridget Myers
Personal Assistant to FSD Judges
Judicial Administration
61 edward Street, George Town
P.O. Box 495, Grand Cayman KY1-1105, Cayman Islands
Direct Tel: (345) 244-3890 and Fax (345) 949-5968

---END---

12th email: Court informs Simamba to expect a phone call or email on the date of hearing regarding connecting him to the hearing by video-link.

From: Bridget Myers <Bridget.Myers@judicial.ky>
Sent: Friday, May 3, 2019 4:29 PM
To: Bilika Simamba <bhsimamba@gmail.com>
Cc: Wingrave, Michael <minchael.wingrave@dentons.com>; Jenesha Simpson <Jenesha.Simpson@Judicial.ky>; Shiona Allenger <Shiona.Allenger@Judicial.ky>; Yasmin Ebanks <Yasmin.Ebanks@Judical.ky>; Dube, Sylvester <sylvester.dube@dentons.com>; Connolly, Oliva <Olivia.Connolly@dentons.com>
Subject: RE: Bilika Simamba v HSA G32 of 2014

Dear Mr Simamba,

The judge advises that the matter will proceed as scheduled next week. Having regard to the full written submissions already placed before the Court and the nature of the case, he does not consider you will be prejudiced by not being able to make oral submissions. The Court will not favourably consider any application by the Defendant to raise any new points orally. Should any new points be raised, you will be given an opportunity to respond to them before judgement is delivered.

If it is feasible to allow you to address the Court by video-link for a short time, the judge will facilitate your request for this opportunity and you will be contacted by phone or email on Monday. He regrets any confusion that past communications on the video-link issue may have caused.

Many thanks

Bridget Myers
Personal Assistant to FSD Judges
Judicial Administration
61 edward Street, George Town
P.O. Box 495, Grand Cayman KY1-1105, Cayman Islands
Direct Tel: (345) 244-3890 and Fax (345) 949-5968

---END---

13th email: Simamba informs Court that on the day of hearing he will be waiting to be connected to the hearing by video-link.

From: Bilika Simamba [mailto:nhsimamba@gmail.com]
Sent: Saturday, May 04, 2019 7:18 PM
To: Wingrave, Michael <michael.wingrave@dentons.com>
Cc: Bridget Myers <Bridget.Myers@Judicial.ky>; Jenesha Simpson <Jenesha.Simpson@Judicial.ky>; Shiona Allenger <Shiona.Allenger@Judicial.ky>; Dube, Sylvester <Sylvester.dube@dentons.com>; Connolly, Oliva <Olivia.Connolly@dentons.com>
Subject: Re: Civ 2014: No. 32 Simamba-v- Cayman Islands Health services Authority

The Judiciary,

I will be ready to argue my case at the date listed for hearing that is 10.00AM Cayman time on Monday 6th May, 2019. Will be ready for testing of equipment at 9.00AM unless otherwise informed.

In case of emergency, I can be contacted at 647-745-0951.

Bilika Simamba

---END---