IN COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
Claim No. 2010/CLE/gen/No. 1137

BETWEEN

(1) RICHARD ANTHONY HAYWARD
(2) SUSAN JANE HEATH
(3) GILES EDWARD HAYWARD
(4) RUPERT CHARLES HAYWARD
(5) FRANCESCA ROSE CHELSOM
(6) EMMA LOUISE CAMERON
(7) ALEXANDER JAMES WROUGHTON HEATH
(8) NICHOLAS CHARLES EDWARDS HEATH

Plaintiffs

AND

(1) STRIKER TRUSTEES LIMITED
(2) PROMETHEUS SERVICES LIMITED
(3) RICHARD W DEVRIES
(4) KEITH GRIFFITHS
(5) SIR JACK ARNOLD HAYWARD (died 13 January 2015)
(6) LADY JEAN MARY HAYWARD (died 12 May 2015)
(7) FREDERICK ARTHUR LEBLANC CAMERON (a minor) by PRESTON RABL his Guardian ad Litem
(8) IAN BARRY
(9) PATRICIA RUTH BLOOM
(10) AMY BLOOM CLOUGH
(11) TREVOR BETHEL (died 20 January 2020)
(12) JONATHAN MICHAEL HAYWARD

Defendants

Before: **The Honourable Chief Justice Sir Ian R. Winder**

Appearances: **Ramonne Gardiner with Tinarje Moxey for the Joint Judicial Trustees**
Krystal Rolle, KC with Darren Cash for McKinney Banchroft and Hughes (MBH)
Gail Lockhart Charles, KC with Tatyana Maynard for Richard Ham, KC

28 October 2025

WINDER, CJ

This is the application of the Joint Judicial Trustees (JJT) for leave to appeal the decisions of Fraser SJ (as she then was) dated 8 May 2025 and 12 June 2025.

[1.] The JJT have applied by a Notice of Application dated 23 June 2025, which was settled in the following terms:

> **The Joint Judicial Trustees of the 1993, Sir Jack Hayward Discretionary Settlement Paul Winder and Mark Richford make an application pursuant to 11 (f) of the Court of Appeal Act and the inherent jurisdiction of the Court for an Order seeking leave to appeal the Rulings of Her Ladyship, the Honourable Senior Justice Deborah Fraser (as she then was) dated 8th May 2025 and 12th June 2025, upon the Grounds of Appeal set out in the draft Notice of Appeal at Annex 2.**
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> **The grounds of the application are:**
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> **1.1. The grounds of the application are set out in the draft Notice of Appeal at Annex 2. In summary, the learned Judge breached the Directions Order dated 4th March 2024 and filed on 24th April 2024 in dealing with the Joint Judicial Trustees' Amended Summons filed on 21st December 2021 seeking a wasted costs order against McKinney Bancroft and Hughes and Robert Ham KC (hereinafter referred to as the "Wasted Costs Application") and Mr. Ham KC's Notice of Application filed on 5th February 2024 seeking to dismiss the Wasted Costs Application (hereinafter referred to as the "Dismissal Application") at the same time.**
>
> **1.2. The Defendants will be relying upon the 28th Affidavit of Paul Winder filed on 23 June 2025.**
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> **1.3. A draft of the Order that the Joint Judicial Trustees seek is annexed in "Annex 1.**

[2.] The Application is supported by the 28th Affidavit of Paul Winder. The short affidavit merely exhibited the draft Notice of Appeal. The Notice of Appeal cites 22 grounds and seeks an Order in the following terms:

1. Setting aside in its entirety, the Rulings of Her Ladyship, the Honourable Senior Justice Deborah Fraser dated 8th May 2025 and 12th June 2025;
2. An Order remitting this matter to another Supreme Court Justice for the re-hearing of the Dismissal Application;
3. That McKinney Bancroft and Hughes and Mr. Ham KC pay the Joint Judicial Trustees' costs of the Appeal and in the Supreme Court to be taxed if not agreed; and
4. Such further or other order, as the Honourable Court may deem fit to make in the circumstances of the case.

[3.] The background to this application is to be found in paragraphs 6 -10, 12, 14 and 15 of the ruling of Fraser SJ dated 8 May 2025:

> [6.] On 1 March 2016, the 9th defendant (Patricia Ruth Bloom), by Summons applied to the Court for the approval of the compromise. The approval was sought on behalf of certain minor beneficiaries and certain "representative persons' who included unborn and unascertained persons. It must be noted that Bethel, the 11th Defendant was a named adult defendant and not included in the category of representative persons. The court was not asked to approve the compromise on Bethel's behalf.
> [7.] The hearing for the approval took place on the 11th March, 2016. At the hearing, the 9th defendant was represented by Mr. Robert Ham KC (of the English Bar) and McKinney Bancroft & Hughes, counsel and attorneys at law.
> [8] At the hearing of the application for the approval, the Claimants were represented by leading counsel from the English Bar, and the judicial trustees were represented by leading counsel from the Bahamas Bar. The 11th Defendant was physically present by was not represented by counsel.
> [9] At the hearing, Mr Ham on behalf of the 9th Defendant represented to the Court that Mr. Bethel was present and had agreed to the compromise. The judge did not ask Mr. Bethel to confirm that he was aware of the nature of the application and had agreed to the compromise and the proposed order. The transcript does not show that any other counsel present, whether for the Plaintiffs or the judicial trustees does not show that any other counsel present, whether for the plaintiffs or the judicial trustees or any other counsel in court invited the judge to inquire of Bethel whether he was aware of the nature of the application and whether he approved it. The transcript also does not show that Mr. Bethel asked the court to adjourn the matter so that he could seek advice and or representation in the matter. It does not show that Bethel attempted to make any representation to the court that Mr Ham was wrong when he represented to the court that he had agreed to the compromise.
> [10]. The Order was granted by the Court on the same day, ie the 11th March, 2016. It is not necessary to set out the terms of the Order in its entirety by it is necessary to note that

the Order specifically states Mr Bethell being present in Chambers and recites the following order as to costs, i.e

> 'the cost (including the cost of English solicitor and counsel) of an incidental to this application and the Action generally (including the application for the appointment of judicial trustees in place of the 2nd, 3rd and 8th Defendants) of Mrs Bloom, the Plaintiffs the minor Defendants, Mrs Lough, Mr Bethel and Jonathan be taxed (if not agreed by the 1993 Trustees) on the indemnity basis in relation to this application, but otherwise on the common fund basis and paid as provided in paragraph 16 of the terms of compromise."
>
> ...

[12] On 8th March 2018, some two years after the approval application was heard and the order made Bethel applied to the court to set aside the order made. The basis of the application was that "the said Order of Mr. Justice Winder) which is either sealed by the Court of concealed from the Applicant or by the other beneficiaries procuring its making) cannot be located despite diligent search and inquiries made at the Registry. This works as an injustice on him, insofar as it was procured notwithstanding the provisions of section 83(1) and 87 of The Trustee Act, 1998. Further, the other Beneficiaries and their attorneys failed to make full and frank disclosure of materials facts (insofar as there was a duty of candour) as to more properly and fairly inform the Court's exercise of discretion at the time of the application for the said Order of Mr. Justice Winder."

[14] The judge, after hearing counsel and reading the material recorded as having been read, made an Order in the following terms:

1. The Order made and dated 11th March, AD, 2016, approving certain Terms of compromise be and is hereby set aside.
2. The Plaintiffs and 9th and 10th Defendants are to pay the Applicant the costs of and occasioned by the application (to be taxed if not agreed.

[15] On 21 December 2021 (more than two years after the 2019 order setting aside the approval order), the JJT filed a summons seeking an order to recover costs from Mr. Ham and Messrs McKinney Bancroft & Huges...

[4.] Mr. Ham KC filed an application on 5 February 2024 pursuant to Part 26.1(2)(v) of the Supreme Court Civil Procedure Rules, 2022 ("CPR") and/or Order 59 Rule 8 of the Rules of the Supreme Court and the inherent jurisdiction of the Court for dismissal of the JJT's wasted costs application.

[5.] By the time of the filing of the application of the JJT, the 11th Defendant (Julius Trevor Bethel) had died.

[6.] Fraser SJ, in the exercise of her inherent jurisdiction, dismissed the wasted costs application. The decision is to be found in paragraphs 41–44 of the ruling:

> **[41.] In my judgment, the conduct of Mr. Ham and Messrs. McKinney Bancroft & Hughes, the legal representatives against whom the wasted costs order are sought, do not fall in the category of "improper" "unreasonable" or "negligent" so as to warrant the making of wasted costs order against them.**
> **[42.] Some culpability for the setting aside of the approval order, could easily also rest with the legal representatives of the other parties at the hearing of the 11th March, 2016. It is to be noted that the Claimants were ordered to pay Bethel's costs incurred in applying to set aside the Order. The Court recognized that the Claimants were not without fault. The legal representatives of the judicial trustees are not without some responsibility for what happened at the hearing on the 11th March, 2016. They did not take further steps at the hearing to ensure that the interest of their beneficiary, Bethel, was also protected.**
> **[43.] The making of costs orders is wholly discretionary. Another reason, I would also refuse to make the wasted costs orders sought is the delay in making this application. The approval Order was set aside in 2018. The application for the wasted cost order was not made until December, 2021. By then, Bethel had died. The circumstances surrounding the making of the 2016 Order occurred in 2016, more than nine years ago.**
> **[44.] The Judicial Trustee, in his affidavit, has given no reason for the delay in making the application. If a wasted order was to be sought, the application should have been made shortly after the approval order was set aside back in 2018. For these reasons, I would accede to Mr. Ham's application and dismiss the Judicial Trustees' summons of the 21st December 2021, as amended.**

[7.] The JJT submit that:

> **16. The crux of the Judicial Trustees' appeal arises from the Learned Judge breaching a previous Directions Order with respect to the Dismissal Application. In rendering thr Court's Ruling the Learned Judge appears to have forgotten about the Court's previous Directions Order.**
> **17. Pursuant to a Directions Order filed on 24th April 2024, the following directions were ordered:**
>
> > ***1. The strikeout application should be heard and determined prior to the wasted costs application.***
> > ***2. The parties shall file and serve any evidence in relation to the strikeout application on or before 2nd July 2024.***
> > ***3. The parties shall lodge any Skeleton Arguments in relation to the strikeout application on or before 9th July 2024.***

4. The strike out application shall be heard on 17th July 2024.

...

21. In dealing with both applications at the same time, the Court not only breached its own Directions Order, but essentially pre-judged the Wasted Costs Application and took into account matters and considerations related to wasted costs when dealing with the Dismissal Application. The learned Judge clearly erred in dealing with both the Dismissal and Wasted Costs Applications simultaneously. ...

...

23. The findings of the Court clearly breach and contradict paragraph 1 of the Directions Order filed on 24 April 2024, which states that "the strikeout application should be heard and determined prior to the wasted costs application.

24. The application before the Court was the Dismissal Application and not the substantive Wasted Costs Application. Therefore, the Court clearly erred in determining the Wasted Costs Application in breach of the clear wording of the Directions Order. The learned Judge was evidently unclear on the issue that the Court had to determine and decide.

[8.] According to Counsel for Ham KC at paragraphs 23 and 24 of her submissions:

23. It is respectfully submitted that the Judicial Trustees' application for leave to appeal both the Dismissal Ruling and the Costs Ruling should be refused for the following reasons:

First, the proposed appeal has no realistic prospect of success, as there is no flaw in the Learned Judge's reasoning and her ruling is, grounded in established principles, and well within the broad discretion afforded to trial judges to dismiss hopeless cases. The Dismissal Ruling represents a proper exercise of judicial discretion to dismiss hopeless cases. As the Learned Judge meticulously outlined at paragraphs 32–44, the application failed to satisfy the threshold for wasted costs orders under *Ridehalgh v Horsefield* [1994] Ch 205 and *King v Stiefel* [2023] EWHC 453 (Comm) and the delay in bringing the application made it inappropriate for any wasted costs order to be made.

Second, with regard to appealing the Dismissal Ruling (delivered on 8 May 2025), no explanation has been advanced for the delay, therefore it is reasonable to conclude that no good reason exists and the application for an extension of time will fail, thus the appeal itself has no real prospect of success as it cannot proceed unless an extension of time is granted. There are no reasonable prospects of the Judicial Trustees obtaining an extension from the Court of Appeal, as no reason for the delay has been advanced, let alone a good reason. The *Privy Council in Junkanoo Estates Ltd et al v UBS (Bahamas) Ltd* [2017] UKPC 8 requires, inter alia, an explanation for the delay. The Judicial Trustees have offered no explanation. This omission is fatal. Absent any explanation, this Court cannot responsibly find realistic prospects of an

extension being granted and it follows that it cannot find that reasonable prospects of the appeal succeeding exist.

24. The application to appeal the Costs order, although filed within the 14 days, is similarly hopeless, and leave ought to be refused. It is trite law that costs orders are discretionary and that the appellate court will be slow to interfere with a trial judge's exercise of discretion unless the judge acted on a wrong principle, misapprehended the facts, or reached a conclusion plainly outside the permissible range *Maria Iglesias Rouco v Sanchez Busnadiego* (SCCivApp Nos. 147 & 148 of 2021). There is no indication that any of these factors apply to the Learned Judge's exercise of her discretion to award the successful parties their costs in keeping with the usual rule that costs follow the event. Therefore, it is respectfully submitted that intended appeal of the costs order is fanciful and has no realistic prospects of success.

[9.] According to MBH at paragraphs 46 to 59 of their submissions:

The Intended Appeals Have No Prospect of Success.

46. In relation to the intended appeal of the Dismissal Order, it is also critically important to have regard to what the Dismissal Order actually states and what it actually did.

47. As stated above, the Court by the Dismissal Order stated at Paragraph 44 as follows:-

> **For these reason, I would accede to Mr. Ham's application and dismiss the Judicial Trustee's summons of the 21st December 2021, as amended.**
>
> **[Emphasis Added]**

48. The only Order that the Judge actually made was that she acceded to Mr. Ham KC's application and dismissed the Wasted Costs application.

49. What this means first of all is that she didn't dismiss the Wasted Cost application on its merits, she dismissed it summarily pursuant to Mr. Ham's application.

50. While it is conceded that the Learned Judge considered the merits of the Wasted Costs application and made findings on issues such as the service on Mr. Bethel, the consent of Mr. Bethel and the relative culpability of the parties, this consideration and the resultant findings were all ultimately in the context of her determination on whether the application should be summarily dismissed and in the course of acceding to Mr. Ham's application.

51. If one were perfecting the Dismissal Judgment/Dismissal Order, one would be hard pressed, despite the dicta in the paragraphs referenced by the Judicial Trustees, to identify a paragraph where the Learned Judge actually made an Order dismissing the Wasted Costs application on its merits. The Learned Judge's statements at Paragraph 43 of the Dismissal Judgment that she "*would*" refuse to make a Wasted Cost Order was made in the context of her determination that the application was hopeless en route to her ultimate determination to dismiss it summarily.

52. Further, the Dismissal Order starts with the words, "*For these reasons*" and this is because everything that the Learned Judge said in the preceding paragraphs are the reasons why she acceded to Mr. Ham's application.

53. Consequently, the Judicial Trustees' intended grounds of appeal i. through vi., xii, and xiii are all with respect misconceived and unarguable with no prospect of success.

54. The Judicial Trustees' intended ground of appeal vii., being an intended challenge of a Case Management decision, does not actually assert that the Learned Judge acted on wrong legal principles when she summarily dismissed the Wasted Costs application. The complaint is that she didn't identify any authority and that is not at all an assertion that she acted on wrong legal principles.

55. Interestingly, the Judicial Trustees by Paragraph 47 of their submissions raise this question as an alleged legal issue in respect of which clarification is required. While it is by no means being conceded that any such clarification is required, the Judicial Trustees' contention demonstrates that they have not by intended ground vii. asserted that it was wrong in law for the Learned Judge to have summarily dismissed the Wasted Costs application.

56. Further, having considered the merits of the Wasted Costs application the Learned Judge clearly formed the view that the application was hopeless and proceeded to dismiss it summarily after having at Paragraph 24 and 25 of the Judgment confirmed the Court's ability to dismiss hopeless proceedings which are before the Court.

***57.* Moreover, the Judicial Trustees' intended grounds of appeal vii, viii and ix are also unarguable in so far as they seek to advance a contention that Rule 26.1(2)(v) of the CPR which states that the Court can *"take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective…"* does not include a power to summarily dismiss an interlocutory application which is demonstrably hopeless and/or that the Court's inherent Case Management powers are not so wide as to include such a power. Such a contention is in and of itself unarguable.**

***58.* The Judicial Trustees' intended grounds of appeal x. and xi. are similarly unarguable as they provide no basis whatsoever for impugning the findings of the Learned Judge on the Judicial Trustees' delay in bringing the Wasted Court application and the finding that the Judicial Trustees provided no reason for this delay. Such delay was a wholly proper consideration for the exercise of the discretion and any suggestion to the contrary (if made by the Judicial Trustees) is unarguable.**

59. The Judicial Trustees' grounds of appeal xiv., xv and xvi are demonstrably vague and lacking in any merit to reasonably cause an appellate court to interfere with the lower Court's Case Management decision.

[10.] At the hearing, the Respondents raised preliminary objections. They both argued that the application for leave ought not to be entertained on the basis that it ought properly to have been made within 14 days in accordance with Rule 11(1) of the **Court of Appeal Rules**.

[11.] It is not disputed that the application for leave to appeal the Substantive May 2025 dismissal ruling was made some six weeks following the decision by Fraser SJ. The subsequent costs order was made within the prescribed 14 days.

[12.] The JJT say they were awaiting the decision on the award of costs but contend that the issue of the extension of time to appeal is a matter for the Court of Appeal and that it is something to be raised there and not before this court. The JJT say that the only issue before the current court was whether to grant leave to appeal. They rely on the decision in **Junkanoo Estates Ltd. and others v UBS Bahamas Ltd.** [2017] UKPC 8. Per Lord Sumption:

> **5. Under section 11(f) of the Court of Appeal Act, an appeal to the Court of Appeal from an interlocutory order lies only with the leave of the Supreme Court or that of the Court of Appeal. Rule 27(5) of the Court of Appeal Rules provides: "Wherever under the provisions of the Act or of these Rules an application may be made either to the court below or to the court, it shall be made in the first instance to the court below." It is common ground that for this purpose an order giving summary judgment is an interlocutory order. The English rule to this effect was stated in White v Brunton [1984] QB 570 and has been applied for many years in the Bahamas.**
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> **6. On 20 April 2015, the defendants filed a notice of appeal against the order of Evans J, together with an application for a stay of execution of the judgment. They had not, however, sought leave to appeal from Evans J. Because of Rule 27(5), they were not therefore in a position to seek it from the Court of Appeal, unless the Court exercised its general power to dispense with compliance, which they had no reason to do. The matter was heard in the Court of Appeal over four days, on 20 May, 29 July, 14 September and 2 November 2015. Junkanoo and Mr Starostenko were each represented by Counsel. Mrs Starostenko appeared in person. UBS took the preliminary point that no leave had been sought or obtained, and in a judgment delivered on 2 November, the applications were dismissed and the Notice of Appeal struck out on that ground.**
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> **7. There followed a period of some months in which the defendants, and in particular Mrs Starostenko, attempted to make further applications in the Supreme Court, including an application for a stay of execution of the possession order. According to Mrs Starostenko, the Supreme Court registry refused to accept any applications from her on the ground that the Supreme Court was functus and the matter had gone to the Court of Appeal. The Board is unable to determine exactly what happened between Mrs Starostenko and the court administration. She was apparently acting in person and seems to have made personal approaches to the court office rather than lodging applications in proper form. What seems, however, to be the position on the presently available evidence, including Mrs Starostenko's affidavit sworn 8 August**

2016, is that the applications which she wished to make in the Supreme Court did not include an application for leave to appeal from Evans J's judgment of March 2015. Mrs Starostenko told the Board that this was because she had been given to understand that until an extension of time had been obtained, she would not be in a position to seek leave to appeal.

8. If so, this was an error. The proper course would have been to apply first to Evans J, on notice to the plaintiff bank, for leave to appeal. If that application for leave had been made in the ordinary way by notice of motion, the registry would have been bound to receive it and list it for hearing before the judge. If leave had been given, the next step would have been to apply to the Court of Appeal for an extension of time for the appeal. If leave to appeal had been refused, application could then have been made to the Court of Appeal for leave to appeal and an extension of time. An application for a stay of execution could have been made at the same time as these applications.

[13.] Section 11(f) of the **Court of Appeal Act** provides:-

11. No appeal shall lie-
(a) from any order allowing an extension of time for appealing from a judgment or order;
(b) from an order of a Justice of the Supreme Court giving unconditional leave to defend an action;
(c) from any decision of the Supreme Court where it is provided by the Constitution that such decision is to be final;
(d) from any order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point which would not have been available to such party on such appeal;
(e) without the leave of the Supreme Court or of the court, from an order made with the consent of the parties or as to costs only where such costs are by law left to the discretion of the Supreme Court;
(f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court except-

(i) where the liberty of the subject or the custody of infants is in question;
(ii) where an injunction or the appointment of a receiver is granted or refused;
(iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;
(iv) in the case of an order in a special case stated under the Ch. 181. Arbitration Act.
(v) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Ch. 308. Companies Act in respect of misfeasance or otherwise; or
(vi) in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions.

Rule 11(1) of **Court of Appeal Rules** provides:

> **Every notice of appeal shall be filed and a copy thereof served by the appellant upon all parties to the proceedings in the court below who are directly affected by the appeal –**
>
> **(a) in the case of an appeal from an interlocutory order, fourteen days;**
>
> **(b) in any other case, six weeks, calculated from the date on which the judgment or order of the court below was pronounced or made.**

[14.] Respectfully, I am not satisfied that the Privy Council decision in **Junkanoo** says what the JJT contend. It is true that an extension of the time within which to appeal will be required once leave is granted, but this does not obviate the need to also commence the process of seeking leave to appeal within 14 days of the making of the interlocutory order. This is supported by the case of **Vesco v IOS Ltd. (In Liquidation)** 1979-80 1 LRB 430. where the Court of Appeal corrected the mistaken view of Counsel, who had taken an even narrower view that the application for leave and the hearing of that application had to be completed within the 14 days. According to Blair Kerr P.:

> **Mr Turnquest, counsel for the defendant (applicant in this matter) referred to an informal meeting which he said was had with the learned judge in the court below. He informed us from the Bar that, following upon that meeting, he was of the opinion that the effect of rule 21(2) and (4) was that it was not enough that the summons be filed within the time prescribed but that the sub-rr required that the actual application be made within the time prescribed.**
>
> **We are clearly of the opinion that this is not so. If the summons seeking leave is duly filed and served within the time prescribed the application may be heard at any time suitable to the court.**

[15.] In the circumstances, the time limited for the filing of the application for leave to appeal having expired, the JJT was obliged to make the proper application for the extension of the time within which to apply for leave to appeal. In the absence of an application for an extension of the time within which to apply for leave, I am satisfied that there is no proper application for leave before me.

[16.] Mr Gardiner, for the JJT submits that if I found that an extension was needed, I should extend, as the overriding objective would thereby be fulfilled. While I am not satisfied that this is a valid submission in these circumstances, I note that the considerations for an extension of time require the court to have regard to:(i) the period of delay; (ii) the reason for the delay; (iii) the prospects of success; and (iv) the issue of prejudice to the parties. See **Rodriquez Jean Pierre v. R** [2023] UKPC 15.

[17.] It is a well settled principle that leave to appeal will be granted only if: (i) the proposed appeal has a realistic (not fanciful) prospect of success; or (ii) the appeal raises an issue of public interest or requires clarification of the law. In **Junkanoo**, Charles JA sets a useful recitation of these principles at paragraphs 20-22 as follows:

> **Test for granting leave to appeal**
> **20. The guiding principle in determining whether leave to appeal should be granted is set out in the Practice Note provided in the leading case of Smith v. Cosworth Casting Processes Ltd. (1997) 4 All ER 840 where Lord Woolf stated:**
>
> > **"The guidance is as follows:**
> >
> > **1. The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word "realistic" makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.**
> >
> > **2. The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarifying." [Emphasis added]**
>
> **21. In addition, in certain "exceptional circumstances" the Court may grant leave even though the case has no realistic prospect of success but there is an issue which, in the public interest, should be examined by the Court of Appeal: See: Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) [1999] 1 WLR 2 at paras. 10 to 11 where the following is stated:**
>
> > **"The general test for leave**
> >
> > **10. ...The general rule applied by the Court of Appeal, and thus the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are where a case raises questions of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for reconsideration.**
> >
> > **11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated**

below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave." [Emphasis added]

22. The Courts in The Bahamas have consistently followed the guidance given by Lord Woolf in Smith v Cosworth Casting Processes Ltd. In Keod Smith v Coalition to Protect Clifton Bay SCCivApp. No. 20 of 2017, Isaacs JA (as he then was) succinctly summarized the test to be applied by a court when determining whether to grant leave. At paragraph 23 of the Judgment, he stated:

> **"23. The test on a leave application is whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying: per Lord Woolf in Smith v Cosworth Casting Processes Ltd [1997] 4 All ER 840."**

[18.] I am not satisfied that the proposed appeal has any reasonable prospects of success. This is a necessary factor in an application to extend as well as the leave to appeal.

[19.] Despite the protest of the JJT, I am not satisfied that any real prejudice was occasioned to them by the change in direction of the judge, to deal with the applications jointly. The learned judge was not bound by the directions order made in the course of case management. Indeed, the overriding objective compelled her to seek the most efficient, cost effective and fair means of disposing of the applications.

[20.] In dismissing the wasted costs application the learned judge simply exercised her discretion on the basis that there was considerable delay in pursuing it. The subsequent costs order also reflected another exercise of the court's discretion, a discretion (as it relates to the award of costs) which has been recognized to be wide.

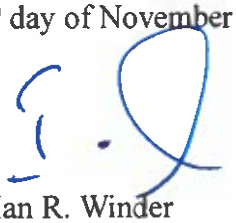
[21.] Appellate courts continually remind us that they are loathed to interfere with the exercise of the discretion of the lower courts unless there is proper cause to do so. In **Junkanoo Estates Ltd Yuri Starostenko Irina Tsareva Starostenko and UBS (Bahamas) Ltd. (In Voluntary Liquidation)** the Court of Appeal recently re-stated this principle. According to Chales JA, after referring to cases such as **Maria Englesias Rouco et al v Juan Jose Sanchez Busnadiego et al** [2021] 1 BHS J No. 52 and **Old Fort Bay Property Owners Association v Old Fort Bay Company Limited** [2021] BHS J No. 10 and stated as follows: -

47. Encapsulating, it is a trite principle of law that an appellate court will not interfere with the discretion of a lower court unless the appellate court is satisfied that:
(i) the decision was plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree;
(ii) miscarriage of justice would result; or
(iii) irrelevant matters were taken into account or relevant factors were not taken into account.

[22.] In my judgment, there is no serious basis for the Court of Appeal to conclude that the learned judge either applied the wrong principles, took into account matters which she should not have taken into account or omitted matters which she ought to have considered in dismissing the wasted costs order as she did. Consequently, I am unable to find that the learned judge exercised her discretion in such a manner that warrants appellate interference, such that it presents with real prospects of success.

[23.] In the absence of a realistic prospect of success there is no basis for an extension or the grant of leave to appeal. In the circumstances therefore leave to appeal is refused.

Dated this 25th day of November 2025



Sir Ian R. Winder

Chief Justice