Neutral Citation Number: [2025] CA (Bda) 15 Civ

Civil Appeal No. 11 of 2025

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. ACTING JUSTICE ALEXANDRA WHEATLEY
CASE NUMBER 2018: No. 9

Dame Lois Browne Evans Building
Hamilton, Bermuda HM 12

Date: 20/06/2025

Before:

JUSTICE OF APPEAL THE HON IAN KAWALEY
JUSTICE OF APPEAL THE HON NARINDER HARGUN
and
ACTING JUSTICE OF APPEAL THE HON LARRY MUSSENDEN

- -

Between:

FATHER

Intended Appellant

- and -

MOTHER

Intended Respondent

Appearances:
The Intended Appellant in person
Ms Sara Tucker of Trott & Duncan Limited for the Intended Respondent

Hearing date(s): 13 June 2025
Date of Judgment: 20 June 2025

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Application for leave to appeal – leave to remove child from the jurisdiction - discretionary decision of the Judge – principles to be applied

RULING ON APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF APPEAL

HARGUN JA:

Introduction

1. These proceedings concern the Intended Respondent's (the **"Mother"**) application requesting the Court to grant leave to relocate to Alberta, Canada with the parties' six-year-old daughter (**"A"**). The Mother's application is opposed by A's father (the "**Father**".

2. As Acting Justice Wheatley (the **"Judge"**) noted in paragraph 2 of her Judgment dated 19 May 2025 (the **"Judgment"**), the Mother was born in Grenada and is a Grenadian citizen. She relocated to Bermuda in about 2010, as she was in a relationship with a Bermudian, whom she later married. The Mother has a child from this relationship (**"B"**) who is 11 years old. That relationship did not endure, and the Mother and her former spouse divorced in or about 2014. The Mother has an Extension of Spousal Rights Certificate (**"ESERC"**) permitting her to remain in Bermuda until B is either 18 years old or 25 years old if B remains in full-time education. The ESERC also affords her the right to work free from immigration control, as though she is Bermudian. The Mother is also entitled to obtain a PRC Certificate as the mother of Bermudian children once she has resided in Bermuda for 15 years.

3. The Father is a Bermudian. In August 2021, he married his wife and is the stepfather to her two children from a prior relationship who are aged 16 and 11 years old respectively.

4. The Mother's original application for relocation dated 10 June 2022 sought leave of the Court to permanently remove A from the jurisdiction of Bermuda. However, by affidavit dated 26 August 2022 the Mother confirmed that she was amending the relief sought in the original application by seeking leave for A to reside with her in Alberta, Canada for a minimum of five years while she completed her university studies.

5. In paragraph 82 of the Judgment the Judge granted the Mother conditional leave to temporarily remove A from the jurisdiction to Alberta, Canada for the duration of the Mother of obtaining a degree, commencing in the academic year 2025/2026 (or commencement in January/February 2026 should the commencement in August/September 2025 not be available) and that the relocation shall be for no more than three (3) academic years. The Judge further held that this conditional leave is subject to the Mother making an application for a student visa and upon approval, the Mother shall produce confirmation to the Father and the Court. Thereafter, the Mother shall produce confirmation of the following to the Court:

    (a) Proof of enrolment in University/College and all pertinent details such as length of course, location and accommodation.

    (b) Details of her and A's intended accommodation.

    (c) Details of the school in which she intends to enrol A.

    (d) School calendar showing all school breaks.

6. During A's temporary relocation with the Mother, the Judge ordered that the Father shall have the following access:

    (a) Each summer for a period of six (6) weeks with a date to be agreed by the parties.

    (b) Subject to confirmation of A's school calendar, the Father may exercise access with A in Alberta for the duration of the half term period in or around October 2025.

    (c) The Father shall have alternating Christmas holidays with A, commencing in 2026.

    (d) Subject to confirmation of A's school calendar, the Father may exercise access with A in Alberta for the duration of the half-term period in or around February 2026.

    (e) Provided that A has a two-week break from school over Easter holidays, the Father shall have access with A in Bermuda on an alternating basis.

    (f) The Father shall have audio-visual access with A for a minimum of the three (3) times a week up to one (1) hour

7. On 28 May 2025 the Father applied to the Judge for leave to appeal to the Court of Appeal the orders made by the Judge in the Judgment. By Ruling dated 4 June 2025 the Judge refused the Father's application. The Father now applies to this Court for leave to appeal the orders made in the Judgement to the Court of Appeal.

The test to be applied for leave to appeal

8. There is no dispute in relation to the test which this Court is obliged to apply in relation to a decision of the Supreme Court relating to access and custody and removal of children from the jurisdiction. Furthermore, a decision in relation to these matters necessarily involves an exercise of discretion by a judge and it would be a rare case where the Court would consider it appropriate to interfere with such a decision. In ***Bellenden (formerly Satterthwaite) v. Satterthwaite*** [1948] 1 All E.R. 343, Asquith L.J., dealing with the issue when it may be appropriate for an appellate court to interfere with a discretionary decision in matrimonial proceedings, said, at p. 345:

> *"It is, of course, not enough for the wife to establish that this court might, or would, have made a different order. We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere."*

9. In order for this Court to give leave to appeal a discretionary decision of a judge, the grounds of appeal will not likely be reasonably arguable or have any real prospect of success unless the applicant can sensibly contend that the Judge erred by: (a) exercising her discretion under a mistake of law or misapprehension of the facts; (b) taking irrelevant matters into consideration or failing to take relevant matters into consideration; or (c) by making a decision which is irrational on any reasonable view (see paragraph 15 of the judgment of Subair Williams J in ***Apex Fund Services Ltd v Clingerman and Silk Road The Funds Limited (Leave to Appeal)*** [2020] Bda LR 12).

Grounds of Appeal

10. The Father contends that leave to appeal should be given by the Court based upon a number of grounds which are considered below.

(i) Judicial disruption and the improper dismissal of prior orders without lawful review

11. The Father complains that his case was materially affected by the unjust and procedurally irregular reassignment of judges, the disruption of judicial continuity, and the improper dismissal of prior rulings without proper lawful review. He further states that a trial of this matter was scheduled in July 2023. However, the day before the trial he was informed by the Court that the matter had been adjourned. The Father later learned that Stoneham J, who had dealt with this matter on previous occasions, had been placed on suspension. As a result, Wheatley AJ had been assigned to the case which, the Father contends, resulted in significant delay in resolving the relocation issue, a reset of the judicial process with a new judge unfamiliar with the case and substantial legal fees and stress for his family.

12. The Father contends that the judicial disruption and its impact was particularly egregious as Stoneham J had ruled twice in his favour, demonstrating a consistent approach to the case based on a deep understanding of the facts. He says that Wheatley AJ reached a conclusion diametrically opposed to Stoneham J's rulings, suggesting a fundamental inconsistency in the judicial approach that undermines confidence in the administration of justice.

13. As the Father notes Stoneham J was unable to deal with this matter at the scheduled trial as she had been placed on suspension and was not available to carry out judicial duties. In the circumstances it is understandable that a new judge was assigned to preside over the trial of this matter. The fact that Stoneham J had previously rendered two rulings which were favourable to the Father and Wheatley J has given a ruling which the Father considers to be unfavourable to him does not provide a basis upon which the Court can properly interfere with the decision of the Judge.

14. In this context the Father also complains that in the Judgment Wheatley J dismissed Stoneham J's prior rulings, namely the 2022 *ex parte* Order and the 2022 Variation Order, without lawfully setting aside.

15. It is to be noted that the principal issue before the Judge was whether the Mother should be given leave to temporarily remove A from the jurisdiction to Canada for the duration of the Mother's university education. The 2022 *ex parte* Order and the 2022 Variation Order form the background to the current application which the Judge was required to decide upon. Leaving aside the Judge's comments in relation to the circumstances in which this Orders were made, the Judge in fact did not set aside these Orders. I am satisfied that the Judge's comments in relation to the previous Orders made by the Court do not provide an arguable basis upon which the Court can properly interfere with the principal decision of the Judge in relation to whether leave should be given to temporarily remove A from the jurisdiction.

(ii) Introduction of the legal framework not presented by either party without the opportunity to respond

16. In relation to this ground the Father complains that the Judgment asserts that the UK Welfare Checklist is not required in Bermuda and the level of scrutiny would be vastly different if the relocation is temporary as compared to a permanent relocation. The Father contends that this analysis is legally flawed. He also contends that it is a serious error in law for the Court to introduce an entirely new legal theory without that proposition being raised by either party during the proceedings. He says he was not given an opportunity to address this theory or to present arguments in response, which, he contends, amounts to a denial of procedural fairness.

17. I am unable to accept this ground provides an arguable ground to interfere with the decision of the Judge. In paragraph 21 of the Judgment, the Judge deals with the issue of relocation by the parent to a familiar place as against to a place the parent has never visited before. In that context the Judge properly referred to the Court of Appeal decision in ***Re F and H (Children)*** [2008] 2 FLR 1667 and accepted the proposition established by that case that the level of detail required to be provided to the Court was greater where the party is moving to a place they have never resided before and is thus not tried and tested whereas it is less when the parent is returning to a familiar environment.

18. At paragraph 80 of the Judgment the Judge deals with the separate issue of whether the Court's approach should differ depending upon whether the relocation is permanent or temporary. In that context the Judge states:

> *"As already stated, the cases relied on by the Counsel are all in respect of permanent relocation applications and therefore can be distinguished; however, I accept the guidelines provided by the UK cases are of great assistance.* ***I raise this distinction as holistically the weighing of the risk and best interests of A will be vastly different between a temporary relocation compared to that of a permanent one, the most paramount importance is that of the child in all instances.****"*

19. The above statement made by the Judge in paragraph 80 of the Judgment is, in my view, plainly correct. Furthermore, the Judge accepted that even in the case of temporary relocation "*the guidelines provided by the UK cases are of great assistance*."

20. I am unable to see any necessary contradiction between the statements made by the Judge in paragraphs 21 and 80 of the Judgment. Furthermore, the Judge expressly states at paragraph 56:

> *"Notably, the case of* ***Re F and H (Children)*** *relied on by the Father ultimately addresses an application where the relocation of the children was being sought on a permanent basis, a distinction which cannot be ignored.* ***That being said, I certainly accept the guidance provided in Re F and H (Children) would still be applicable as helpful guidance****."*

21. In this context the Judge held at paragraphs 49 and 57 that the fault in the relocation application cannot be placed at the feet of the Mother. The Judge was satisfied that due to immigration policies in Canada, the Mother must have the consent of the children's (A and B) respective fathers to relocate with her in order for the Mother to be able to make application for a Student Visa. The Judge held that this has placed the Mother in a challenging position as great criticism was made throughout the hearing of the lack of information provided for the new location she intends to reside with the aunt and uncle.

22. No doubt it is for this reason paragraph 83 of the Judgment makes leave to the Mother to relocate to Canada conditional upon the Mother producing confirmation of, *inter-alia*, (a) details of her and A's intended accommodation; and (b) details of the school in which she intends to enroll A.

23. In all the circumstances I am satisfied that this ground does not disclose an arguable basis for interfering with the Judge's decision.

(iii) Failure to apply the Welfare Principle: lowering the evidentiary standard improperly

24. The Father complains that the Judgment contained fundamental errors of law by failing to correctly apply the paramount welfare principle mandated by section 6 of the Children's Act 1998. The Father contends that the central flaw lies in the Judgment's confusing and contradictory treatment of the UK statutory welfare checklist, suggesting that its relevance is diminished in cases of "*temporary*" relocation. The Father submits that the judge erred significantly in suggesting that the "*temporary*" nature of the proposed relocation justifies a lower evidentiary standard or a diluted welfare analysis.

25. At paragraph 17 of the Judgment the Judge expressly referred to the well-established test in relocation cases as set out in the judgment of Mostyn J in ***NJ v OV*** [2014] EWHC 4130 (Fam). The Judge expressly referred to paragraph 6 of the judgment of Mostyn J setting out the summary of the governing principles applicable to relocation applications. At paragraph 6 (iv) Mostyn J suggests the questions which the judge should ask and answer in relation to relocation cases:

> *"(iv) The guidance suggests that the following questions be asked and answered (assuming that the Applicant is the mother):*
> *a) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?*
> *b) Is the mother's application realistically founded on practical proposals both well researched and investigated?*
> *c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?*
> *d) Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?*
> *e) What would be the extent of the detriment to him and his future relationship with the child were the application granted?*
> *f) To what extent would that detriment be offset by extension of the child's relationships with the maternal family and homeland?"*

26. The Judge expressly referred to paragraph 6(vi) of the judgment of Mostyn J emphasising that since the circumstances in which such decisions have to be made vary infinitely and the judge in each case has to be free to decide whatever is in the best interests of the child, such guidance should not be applied rigidly as if it contains principles from which no departure is permitted.

27. At paragraphs 29 to 46 of the Judgment the Judge sets out the parties' respective submissions in relation to the six questions posed by Mostyn J in paragraph 6 (iv) of his judgment in ***NJ v OV***. At paragraph 47 to 79 of the Judgment the Judge sets out her findings in relation to each of the six questions having regard to the parties' submissions set out at paragraphs 29 to 46. At paragraph 81 of the Judgment the Judge concludes:

> "*Having made the findings set out in paragraphs 47 to 79 above which, inter-alia, considered the questions posed in* ***NJ v OV*** *and* ***Re TC & JC (Children: Relocation) as well as considering all of the factors set out in the UK Welfare Checklis****t, I believe it would be in the best interests of A to temporarily relocate with the Mother to Canada whilst the Mother completes her further education*." [emphasis added]

28. Having regard to the Judge's extensive analysis of the issues to be considered as indicated by Mostyn J in ***NJ v VO***, I am unable to accept that it is reasonably arguable either that the Judge has applied the wrong test or made findings of fact which she was not entitled to make. Accordingly, it is not open to this Court to seek to apply its own decision in preference to the decision of the Judge.

29. It is to be noted that the Judge made her decision set out at paragraph 81 of the Judgment by considering "*all the factors set out in the UK Welfare Checklist*". The reference to the Checklist is a reference to the statutory checklist of factors set out in section 1 (3) of the English Children's Act 1989 which the Court should take into account when deciding how best to promote the welfare of the child. As decided by Hellman J in ***FG v HJ*** [2017 SC (Bda) 24 Div (17 March 2017) at paragraph 14 of his judgment, whilst the checklist is not binding on the Bermudian court it may nevertheless be of assistance, as Wade-Miller J found in ***E v K***, unreported, 31 March 2015 SC at paragraphs 105-107. Here the Judge expressly states at paragraph 81 of the Judgment that she has taken into account the UK Welfare Checklist.

30. I do not consider that it is reasonably arguable that it is essential that in addition to the analysis of the six (6) issues suggested by Mostyn J in ***NJ v VO***, a judge should expressly analyse separately each and all factors set out in the English statutory Welfare Checklist.[1] The Judge correctly noted at paragraph 61 of the Judgment that the terms '*comparative analysis*' and the '*global holistic evaluation*' relate to those factors set out in the UK's Welfare Checklist rather than the factors Counsel for the father addressed in the Comparative Analysis. In coming to this conclusion, the Judge relied upon the judgment of McFarlane LJ in ***Re G (Care Proceedings: Welfare Evaluation)*** at paragraph 50:

> *"[50] In the context that I have described, it is clear that a 'global, holistic evaluation' is no more than shorthand for the overall, comprehensive analysis of a child's welfare seen as a whole, having regard in particular to the circumstances set out in the relevant welfare checklist (CA 1989, s 1(3)..."*

31. The Judge was entitled to take the view that many of the factors compared in the Counsel for the Father's Comparative Analysis were entirely subjective and that the Comparative Analysis neither provides the Court with an indication as to how each of the issue should be weighted, nor how each of these components are applicable to the individual factors of the UK Welfare Checklist.

32. In conclusion I am unable to agree with the submissions made by the Father that there is a reasonably arguable case that on this core issue of the welfare of the child the Judge applied the wrong test; or failed to take into account relevant factors; or took into account the facts which were irrelevant; or that the decision of the Judge is perverse. It

[1] As the Judge noted at paragraph 61 of the Judgment, the UK's Welfare Checklist factors can be summarized as follows: (i) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding); (ii) his physical, emotional and educational needs; (iii) the likely effect on him of any change in his circumstances; (iv) his age, sex, background and any characteristics of his which the court considers relevant; (v) any harm which he has suffered or is at risk of suffering; and (vi) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.

is to be noted that the Judge's decision is in accordance with the recommendation of the Court Appointed Social Worker that the Mother be granted leave to remove the child from the jurisdiction after she has submitted a fully completed plan which is satisfactory to the Court.

(iv) Failing to provide a mechanism for review, compliance protection

33. The Father complains that the Judgment failed to include any mechanism for reviewing how the relocation arrangements will work in practice. He says that the Judgment contains no provision for (a) scheduled court reviews at specified intervals during the three-year relocation period; (b) requirements for progress reports from the Respondent regarding A's welfare and adjustment; (c) provision for independent assessment of A's welfare in Canada; and (d) clear processes for addressing concerns or seeking modifications issues arise.

34. In relation to these concerns expressed by the Father it is to be noted that the Court has not yet made any formal Order resulting from the Judgement. Typically, the parties are entitled to argue and seek that a mechanism for review and compliance be included in the Order. Indeed, Counsel for the Mother does not oppose that the Order should contain a provision for review. It seems to me that the concerns expressed by the Father in this regard are premature and should be resolved at the stage when the formal Order is entered into. Accordingly, I do not consider that this ground of appeal provides the Court with a reasonably arguable basis for interfering with the decision of the Judge.

(v) Failure to consider legal risks of international enforcement and Hague status

35. Under this ground the Father complains that the Judgment failed to adequately consider the Mother's citizenship and ties to Grenada in the context of enforcement risks. He says that despite the clear legal requirement to consider enforcement risks, the Judgment failed to address the significant fact that Grenada is not a signatory to the Hague Convention.

36. In this regard it is to be noted that paragraph 82 of the Judgment expressly provides that the temporary removal of A from the jurisdiction "s*hall be no more than three (3) academic years*".

37. Furthermore, the Judge expressly makes a finding at paragraph 51 of the Judgment that she accepts that the Mother will return to Bermuda after the completion of a bachelor's degree:

> *"The Mother's evidence was clear in that she confirmed the Relocation*

> *Application is only for the temporary purpose of her being able to complete a bachelor's degree.* ***After which, her evidence is that she will return to Bermuda. I accept that the Mother was truthful when giving this evidence and does not have any intention of leaving Bermuda with A on a permanent basis****."*

38. Again, as noted earlier, the Court has not made a formal order resulting from the Judgment. Any reasonable concerns the Father may have in this regard should be raised when the formal Order is drafted. For present purposes this ground of appeal does not raise any reasonably arguable legal basis for interfering with the decision of the Judge.

(vi) Judicial bias and unbalanced criticism

39. The Father complains that the Judge demonstrated bias through unbalanced and disproportionate criticism of him. He contends that the Judgment contains numerous instances where he is criticised harshly while similar issues with the Mother are minimised or overlooked. The Father contends that this unbalanced criticism is evident in:

    (a) The characterisation of my opposition to relocation as unreasonable, despite legitimate concerns about maintaining my relationship with A and her well-being.

    (b) The criticism of my expenditure on legal fees, suggesting this demonstrated financial capacity rather than commitment to my relationship with A.

    (c) The negative portrayal of my parenting approach, without similar scrutiny of the Mother's parenting.

    (d) A deeply unbalanced depiction of my character and motives, unsupported by the evidence provided throughout these proceedings.

    (e) The dismissal of my concern about the Mother's behaviour, despite previous court findings supporting these concerns.

40. The Father also complains that the Judge used language that exceeded the bounds of objective assessment, portraying him in disparaging terms that went beyond factual findings and into subjective personal criticism. As an example, he complains that he was described as "*inordinately confident and rigid in his thinking*" and his testimony characterised as "*rehearsed and fanciful*".

41. The test for appearance of bias is well established and requires the Court to consider "*whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased*." (see ***Porter v Magill*** [2001] UKHL 67).

42. It is understandable that the Father considers that the findings or observations made by the Judge in relation to his conduct are unreasonable and unwarranted. However, in cases involving the welfare of a child, the courts are often required to make findings in relation to the conduct of the parties before the court. In my view the above findings and observations do not suggest that the Judge was unable to decide the case fairly based on evidence and the law.

43. With regard to the allegation of bias that it is not suggested that the Judge has any personal or financial or other relationship with the Mother which can arguably give rise to an appearance of bias. I do not consider that the Judge's alleged criticism of the Father arguably crosses the line where it can be said that there is an appearance of bias in this case. Accordingly, I do not consider that this ground of appeal is arguable or has any reasonable prospects of success.

44. The above discussion deals with all the substantive grounds of appeal. I accept that the Father's position in these proceedings is aimed at achieving what the father believed to be in the long term welfare interests of A. It is to his credit and appreciated by the Court that he is exceptionally devoted to his parental responsibilities towards A. However, at this stage of the proceedings the Court is only concerned with considering whether there are any grounds which are reasonably arguable to allow the Court to consider whether it should interfere with a discretionary decision of the Judge. For the reasons set out above I have concluded that this high burden has not been met in this case. Accordingly, I would refuse leave to appeal on the substantive grounds of appeal advanced by the Father.

(vii) Awarding costs without findings of litigation misconduct

45. The Father complains that in this case the Judge failed to follow the well-established principle in family proceedings, particularly those involving children, that the court will generally make no order as to costs. Relying upon ***Re G (Costs: Child Case)*** [1999] 2 FLR 250, the Father contends that cost orders in children's cases are unusual and should only be made if a party has behaved unreasonably in the litigation. He says that litigation misconduct is not merely pursuing an application that ultimately fails or advancing arguments that the court does not accept. Rather, it typically involves conduct that (a) is unreasonable, vexatious, or designed to cause unnecessary delay or expense; (b) involves non-compliance with court orders or procedural rules; (c) includes misleading the court or

withholding relevant information; or (d) demonstrates a lack of good faith in the litigation process.

46. In relation to alleged misconduct on the part of the Father the Judge referred to the Father's evidence in cross examination when he stated in unequivocal terms that he would not agree to any circumstances that the Mother proposed for A's temporary relocation even if those conditions were "*perfect*" due to A's age. At paragraph 92 of the Judgement the Judge noted that the Mother had advised the Father as far back as June 2022 regarding her position that she will not relocate in the event this application was denied. The Judge further stated that the Father had an opportunity at this time to make his position known to the Mother that given A's age he would not agree to relocation under any circumstances at this stage. The Judge seems to be of the view that if the Father had made his position clear in June 2022, the Mother would have been able to consider whether she wished to proceed with the application. In the circumstances the Judge granted the mother her costs in this application to be taxed if not agreed, with cost order made against her for the *ex parte* application to be set off against the costs of this application which the Judge summarily assessed at $ 6,000.

47. I am persuaded that the conduct relied upon by the Judge for departing from the normal rule that the Court should make no order as to costs was arguably not relevant misconduct in this context and should not have resulted in a costs order against the Father. Furthermore, the misconduct relied upon must impact the proceedings. It is difficult to see how the failure by the Father to advise the Mother in 2022 that he would not agree to A's relocation in any circumstances impacted the present application. It always remained the position that if the Mother wanted to temporarily relocate A to another jurisdiction she would have to apply to the Supreme Court for leave to do so.

48. In the circumstances I would grant the Father's application for leave to appeal to the Court of Appeal in relation to the sole issue of costs. In granting this leave I am conscious that it is unusual to give leave only in relation to the issue of costs and the costs involved are relatively modest sum of $6,000 which would not appear to justify the costs of pursuing an appeal to this Court. In the circumstances I would strongly encourage the parties to resolve the issue of costs on an amicable basis rather than incurring the disproportionate expense of pursuing an appeal to this Court.

Conclusion

49. For the reasons set out above I would refuse leave to appeal on the substantive grounds of appeal advanced by the Father. However, I would grant the Father's application for leave to appeal in relation to the sole issue of costs.

50. Unless either party applies by letter to the Registrar within 14 days of the date of delivery of this Ruling to be heard on papers in relation to costs, the Court makes no order as to costs in relation to this application by the Father for leave to appeal to this Court.

MUSSENDEN AJA

51. I agree.

KAWALEY JA

52. I also, agree.