



**Tchenguiz and Rawlinson & Hunter Trustees SA v Akers**  
Court of Appeal  
5<sup>th</sup> October, 2018

**JUDGMENT**  
**37/2018**

Application for leave to appeal to the Privy Council

**IN THE COURT OF APPEAL OF GUERNSEY**  
**CIVIL DIVISION APPEAL No. 515**

**5<sup>th</sup> October 2018**

**Before:**

**Clare Montgomery QC, President**  
**George Bompas QC**  
**Sir William Bailhache, Bailiff of Jersey**

**Between:**

- (1) Robert Tchenguiz**
- (2) Rawlinson & Hunter Trustees SA**

**Applicants/Appellants**

**-And-**

**Stephen John Akers**

**Respondent**

**Advocate Paul Richardson for the Appellants**  
**Advocate John P Greenfield for the Respondent**

**JUDGMENT**

- 1 Earlier this year we had before us the appeals of Mr Robert Tchenguiz against orders made by the Royal Court bringing to an end his applications to have Mr Stephen John Akers committed for contempt of court. On 17 July 2018 we gave a judgment setting out the reasons for our decision dismissing Mr Tchenguiz's appeals. On 11 September 2018 Mr

Tchenguiz gave notice seeking this Court's leave to appeal to Her Majesty in Council (for present purposes referred to as the Privy Council) against the dismissal of his appeals.

- 2 Mr Tchenguiz's application made to this Court is under section 16 of the Court of Appeal (Guernsey) Law 1961. This provides following terms:

*“No appeal shall lie from a decision of the Court of Appeal under this Part of this Law without the special leave of Her Majesty in Council or the leave of the Court of Appeal except where the value of the matter in dispute is equal to, or exceeds, the sum of five hundred pounds.”*

- 3 Mr Tchenguiz submits that we are bound to give him the leave that he asks for, this being a matter of right and not of any discretion so far as the Court of Appeal is concerned. For this proposition he relies on the recent decision of *A v R* [2018] UKPC 4, a case on appeal from this Court. In *A v R* the Privy Council held that, other than in exceptional circumstances (notably, where through lapse of time an appeal would be an abuse of process), this Court has no discretion in the grant or refusal of leave where section 16 applies. *A v R* was a case where the appeal concerned final orders for the payment of sums in excess of £500. As the £500 threshold was exceeded, the case fell within the exception in the last part of section 16 (that is, the exception provided by the words *“except where the value of the matter in dispute is equal to, or exceeds, the sum of five hundred pounds sterling”*).

- 4 There are two features to notice about our decision of 17 July 2018.

4.1 The first is that the decision was interlocutory, not final. The test whether a decision is interlocutory or final is whether or not the decision will resolve the substance of the matter in dispute in the proceedings between the parties, whichever way it is decided. Here the questions which had been submitted to the Royal Court, and then to us, were whether Mr Tchenguiz should be given leave to amend his first committal application, and whether or not he should be allowed to bring a fresh committal application. If Mr Tchenguiz succeeded on either or both questions, he would be allowed to continue to pursue the contempt applications, which accordingly would not have been resolved.

4.2 The second feature is that the value of the matter in dispute in the present case was not £500 or more, even if one considers the substance of Mr Tchenguiz's applications against Mr Akers. The matter in dispute was whether Mr Akers had been in contempt of court and, if so, whether or not he should be committed to prison or punished in some other way. This is not a claim for money or for property with a money value or the like.

- 5 The significance of the first of these two features is that there is authority of this Court for the proposition that this Court has no power at all to give leave to appeal to the Privy Council from interlocutory decisions. Specifically, in *Havilland Estates Ltd v Channel Island Ceramics Ltd (No.2)* (1993) 9 GLJ 54 the Court of Appeal held that, under section 16 of the Court of Appeal (Guernsey) Law 1961, the Court of Appeal has no jurisdiction to grant leave to appeal to the Privy Council from an interlocutory decision or any decision which is not a final or definitive decision on the matters in issue between the parties. This conclusion was subsequently approved and followed by the Court of Appeal in *Hulme v Matheson Securities (Channel Islands) Ltd (No.2)* (1997) 24 GLJ 80. The reasoning in the two cases, neither of which was referred to by the Privy Council in *A v R*, is that section 16, in referring to “a decision”, is referring to a “final or definitive” decision.

- 6 An alternative position is that (a) the exception in section 16 introduced by the final words, the exception allowing appeals as of right where the £500 value threshold is crossed, does not apply in interlocutory appeals where there is no money claim in dispute, while nevertheless (b) this Court does have a discretion as to the giving of leave to appeal. This was the approach taken by this Court in *Garnet Investments Ltd v BNP Paribas (Suisse) SA* (2009-10) GLR 1: see the explanations at paragraph [130] and [131] of the judgment of the Court of Appeal (Sir Geoffrey Rowland QC (Bailiff), Sir Geoffrey Vos, and Clare Montgomery QC) given by Vos JA in the *Garnet Investments* case supra.
- 7 In the circumstances there are, in theory, three possible conclusions as regards Mr Tchenguiz's application.
- 7.1 The first is that he is to be permitted to appeal as of right, subject only to the possible abuse of process exception noted by the Privy Council in *A v R*. In the present case it is not suggested by Mr Akers that the exception is applicable, however much Mr Akers may have submitted that he is on the receiving end of a personal vendetta.
- 7.2 The second is that it is not open to this Court to give leave to appeal, and that any leave to appeal can come only, if at all, from the Privy Council.
- 7.3 The third is that although the matter in dispute has no monetary value, the Court has a discretion whether or not to give leave for the reasons explained in *Garnet Investments*.
- 8 In our judgment Mr Tchenguiz is not entitled to appeal as of right. This is a case where the appeal is in respect of interlocutory orders and on any footing the value of the matter in dispute is less than £500.
- 9 We are nevertheless content to assume in favour of Mr Tchenguiz that the Court has a discretion to grant leave in interlocutory matters where the merits of the appeal warrant the grant of leave. This requires the Court to consider whether the grounds of appeal raise an arguable point of law of general public importance that ought to be considered by the Privy Council in accordance with the test in *Uprichard v Scottish Ministers* [2013] UKSC 21 at [60]. We consider that, for the reasons explained below, the present application falls to be refused on its merits.
- 10 In our judgment of 17 July 2018 we explained that Mr Tchenguiz's applications to the Royal Court were bound to fail, for the reason that he did not have an arguable case that Mr Akers had been in contempt of court, however Mr Tchenguiz sought to formulate his contention that Mr Akers had been in breach of a court order. This meant that Mr Tchenguiz's proposed amendment of his first committal application did not put forward a case with a realistic prospect of success (para [63] of our judgment), and the second committal application disclosed no reasonable grounds for bringing the application (para [70] of our judgment).
- 11 Mr Tchenguiz seeks to argue before the Privy Council that our conclusion, referred to in the previous paragraph, was wrongly arrived at, because after all he had a case with a reasonable basis, so that his proposed amended application had a realistic prospect of success. Therefore (it is submitted) it was not open to us, when considering his case to have Mr Akers committed for contempt, to conclude that there was no realistic prospect of success (see Ground 1(b) & (c) of the proposed grounds of appeal provided by Mr Tchenguiz). It is suggested on Mr Tchenguiz's behalf that we did not hear "detailed arguments" on the point.

- 12 We do not accept this argument. In reaching our decision we necessarily had to consider the question which was central to Mr Tchenguiz's appeals to us, namely whether or not he had a case of contempt of court on the part of Mr Akers which was open to serious argument. It was relevant to consider whether, when seeking to amend his first committal application, Mr Tchenguiz was introducing a case with a prospect of success; and as to his second committal application it was relevant to consider whether he was putting forward a case with reasonable grounds. Mr Tchenguiz by his advocate developed arguments as to this central question, the question of the viability of the case to have Mr Akers committed for contempt of court; and this question involved consideration of the nature and effect of the Privacy Orders and their reach in relation to the matters complained of by Mr Tchenguiz.
- 13 This case therefore does not involve any fundamental procedural injustice of the sort contended for. Nor does our decision raise any arguable point of law of general public importance that ought to be considered by the Privy Council. It raises at best mixed questions of fact and law.
- 14 We also seriously doubt whether there is any public interest in the continued pursuit by Mr Tchenguiz of contempt proceedings against Mr Akers. The proceedings are not private litigation to vindicate, or secure compensation for an invasion of, a private right; they are brought to secure punishment for a supposed offence. In this sense the proceedings are public in nature; and it is difficult to see any public interest that the proceedings now serve. On the other hand an appeal from our decision will further prolong the time Mr Akers is exposed to the threat of the continued pursuit of unwarranted committal proceedings in which expense seems to be of no concern to Mr Tchenguiz.
- 15 We therefore refuse to give Mr Tchenguiz the leave he has applied for.