

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL**

CIVIL APPEAL NO 32 OF 2020
(ON APPEAL FROM HCAL 442 OF 2018)

BETWEEN

FABIO ARLYN TIMOGAN	1 st Applicant
SALAUDIN RABIA	2 nd Applicant
SALAUDIN FAHEEM	3 rd Applicant

and

EVAN RUTH, ESQ, ADJUDICATOR OF THE TORTURE CLAIMS APPEAL BOARD/ NON-REFOULEMENT CLAIMS PETITION OFFICE	Putative Respondent
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and

THE DIRECTOR OF IMMIGRATION	Putative Interested Party
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Before: Hon Barma JA, Au JA and G Lam JA in Court
Date of Judgment: 15 February 2023

J U D G M E N T

Hon Barma JA (giving the Judgment of the Court):

1. On 27 November 2020, this court (Lam VP (as Lam PJ then was), Barma and Au JJA) handed down a judgment dismissing the 1st applicant's appeal (but allowing the 2nd and 3rd applicants' appeals) against the decision of Deputy High Court Judge Bruno Chan given on 15 January 2020 refusing to extend time for the applicants to apply for leave for judicial review. The 1st applicant had sought to review the decision of the Torture Claims Appeal Board ("the Board") dismissing her appeal from the decisions of the Director of Immigration rejecting her non-refoulement claim.

2. The appeals of the 2nd and 3rd applicants, being the 1st applicant's children, were allowed. In addition to granting the 2nd and 3rd applicants leave to apply for judicial review, this court proceeded to determine the substantive application for judicial review and quashed the decision of the Board in respect of the claims of the 2nd and 3rd applicants. We also issued an order of mandamus directing the Board to reconsider the claims of the 2nd and 3rd applicants, with legal representation to be provided to them at the rehearing of their appeals.

3. The facts and issues in the 1st applicant's appeal, as well as the court's reasons for dismissing it, are set out in our judgment.¹ We will not repeat them here.

4. The 1st applicant subsequently applied, purportedly also on behalf of the 2nd and 3rd applicants, by a Notice of Motion filed out of time on 2 June 2022, for leave to appeal to the Court of Final Appeal.

¹ See [2020] HKCA 971

5. In the Notice of Motion, the 1st applicant stated that:

“... The High Court and the Court of Appeal dismissed my leave to apply for judicial review, at least I want to go to the Court of Final Appeal for leave. Please permit.”

6. In her supporting affidavit, the 1st applicant deposed:

“Affidavit for apply of Notice of Motion but out of scheduled time. Please accept my Notice of Motion application and permit me to go to the Court of Final Appeal.”

7. In her written submissions lodged on 16 June 2022, the 1st applicant repeated, *inter alia*, her complaints against and the alleged threats posed by her husband who resided in the Philippines.

8. Having considered the 1st applicant’s Notice of Motion, affidavit and written submissions, we see no reason to depart from the usual practice of determining an application of this kind on the papers. We have, therefore, determined the 1st applicant’s application on the basis of the documents filed.

9. Notwithstanding that the Notice of Motion was purportedly filed by the 1st applicant not only in respect of her own appeal but also on behalf of the 2nd and 3rd applicants, since we have already determined the substantive application for judicial review by the 2nd and 3rd applicants in their favour, we shall treat the Notice of Motion as an application for leave to appeal to the Court of Final Appeal by the 1st applicant only.

10. The 1st applicant failed to explain how and when she eventually came to know about the judgment of this court. We are therefore of the view that the 1st applicant has failed to provide a reasonable explanation for the delay. Further, the delay of around 18 months in bringing the present

application is very substantial, and it is liable to be dismissed on this basis alone. However, we have nonetheless proceeded to consider the merits of the application.

11. So far as the merits are concerned, the matters advanced by the 1st applicant do not constitute grounds for granting leave to appeal to the Court of Final Appeal. The 1st applicant has failed to identify any question of great general or public importance for the Court of Final Appeal to determine, as required by section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance, Cap 484. Nor is any such question apparent to us from the matters she has raised.

12. None of the matters stated in the Notice of Motion are therefore in our view reasonably arguable before the Court of Final Appeal. We also do not see any basis for granting leave on the “otherwise” limb under section 22(1)(b).

13. For these reasons, the Notice of Motion filed on 2 June 2022 is dismissed.

(Aarif Barma)
Justice of Appeal

(Thomas Au)
Justice of Appeal

(Godfrey Lam)
Justice of Appeal

The 1st applicant acting in person