

FACV 7, 8, 9 & 10/2013

FACV 7 of 2013

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

FINAL APPEAL NO. 7 OF 2013 (CIVIL)
(ON APPEAL FROM CACV NO. 45 OF 2011)

BETWEEN

GA

**Appellant
(Applicant)**

And

DIRECTOR OF IMMIGRATION

**Respondent
(Respondent)**

FACV 8 of 2013

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

FINAL APPEAL NO. 8 OF 2013 (CIVIL)
(ON APPEAL FROM CACV NO. 46 OF 2011)

BETWEEN

PA

**Appellant
(Applicant)**

And

DIRECTOR OF IMMIGRATION

**Respondent
(Respondent)**

FACV 9 of 2013

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

FINAL APPEAL NO. 9 OF 2013 (CIVIL)
(ON APPEAL FROM CACV NO. 47 OF 2011)

BETWEEN

FI

**Appellant
(Applicant)**

And

DIRECTOR OF IMMIGRATION

**Respondent
(Respondent)**

FACV 10 of 2013

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

FINAL APPEAL NO. 10 OF 2013 (CIVIL)
(ON APPEAL FROM CACV NO. 48 OF 2011)

BETWEEN

JA

**Appellant
(Applicant)**

And

DIRECTOR OF IMMIGRATION

**Respondent
(Respondent)**

Before : Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Chan NPJ and Lord Clarke of Stone-cum-Ebony NPJ

Date of Judgment : 2 July 2014

JUDGMENT ON COSTS

Chief Justice Ma (giving the judgment of the Court):

1. By a judgment handed down on 18 February 2014, the Court dismissed the appeals of the Applicants GA, FI, JA and PA. Although for the reasons stated in the judgment¹ the appeals were in a sense academic, the Court and all the parties were content to deal with the appeals by reason of the importance of the issues that were raised in them.

2. Apart from the dismissal of the appeals, the Court made an order *nisi* that there should be no order as to costs. It was stated² that the Applicants could be said to have been partially successful in their submissions regarding the IDT³ part of the appeals. The Respondent seeks to vary the costs order *nisi*. Written submissions have been lodged with the Court. This judgment should be read together with the main judgment.

¹ Para 16 of the judgment.

² At para 78.

³ Those submissions in relation to inhuman or degrading treatment qualifying the discretion of the Director of Immigration (the Respondent) whether or not to permit persons in the position of the Applicants to work in Hong Kong.

3. The Respondent's position is simply put: costs ought to follow the event (the appeals having been dismissed) and, regarding the IDT point, this was not a point against which the Respondent had argued in the appeals.⁴

4. In our view, there should be no order made as to costs in the appeals:-

- (1) True it is that the Respondent did not seek to argue against the proposition that his discretion was subject to IDT considerations, but this point still had to be argued (and accepted) by this Court. In other words, on this point alone, the Applicants were justified in appealing to this Court.
- (2) Given that this was the applicable law, in the normal course of events, the Court (or some other tribunal) would then have had to make a determination regarding IDT on the facts of the case. Indeed, the Applicants and the Respondent made submissions at the hearing, asking the Court to make factual determinations in their favour. If the Court had been compelled to take this course, it would then have referred the fact finding exercise to another tribunal.⁵ In view of the academic nature of the exercise, it did not do so. Had this further inquiry been ordered, however, only after the determination in that inquiry would the "event" as far as the Applicants were concerned and as far as costs were concerned, have occurred.
- (3) Accordingly, while it is correct that the Applicants did not succeed in a number of the arguments advanced in the appeal, the IDT argument was an important one that had to be dealt with by this

⁴ The Respondent adopted this position following the decision of the Court in *Ubamaka v Secretary for Security* (2012) 15 HKCFAR 743.

⁵ See para 53(3) of the judgment.

Court, alongside the other points that were dealt with in the public interest. And, but for those factors which made the appeals academic, there would have been further fact finding proceedings at the conclusion of which, the Applicants may have been successful. In these circumstances, it is not appropriate simply to adopt the “costs should follow the event” approach.

5. For the above reasons, the order *nisi* is made absolute.

(Geoffrey Ma)
Chief Justice

(RAV Ribeiro)
Permanent Judge

(Robert Tang)
Permanent Judge

(Patrick Chan)
Non-Permanent Judge

(Lord Clarke of Stone-cum-Ebony)
Non-Permanent Judge

Written submissions by Mr Michael Fordham QC, Mr Earl Deng and Mr Timothy Parker, instructed by Daly & Associates, assigned by DLA, for the Appellants

Written submissions by Mr Paul Shieh SC and Ms Grace Chow, instructed by the Department of Justice, for the Respondent