**FACV No. 8 of 2023**

**[2024] HKCFA 17**

**IN THE COURT OF FINAL APPEAL OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**FINAL APPEAL NO. 8 OF 2023 (CIVIL)**

(ON APPEAL FROM CACV NO. 355 OF 2021)

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BETWEEN

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| **MK** | Applicant  (Appellant) |
| **and** |  |
| **REGISTRAR OF HIGH COURT** | Respondent |
| **and** |  |
| **DIRECTOR OF LEGAL AID** | Interested Party  (Respondent) |

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| Before: | | | Mr Justice Ribeiro PJ, Mr Justice Fok PJ,  Mr Justice Lam PJ, Mr Justice Tang NPJ and  Lord Phillips of Worth Matravers NPJ | |
| Date of Judgment: | | | 20 June 2024 | |
|  | **JUDGMENT ON COSTS** | |  | |

**Mr Justice Ribeiro PJ:**

1. On 22 March 2024, the Court unanimously dismissed the appeal in *MK v Director of Legal Aid* [2024] HKCFA 6. This is the Court’s judgment on costs, adopting the abbreviations used in the main judgment.
2. The immediate reason for dismissal of the appeal was the decision that MK had waived any LPP that had existed.[[1]](#footnote-1) The Court went on to consider other issues raised, including the scope and *vires* of LAR 12(10) and its express abrogation of LPP,[[2]](#footnote-2) as well as the nature and scope of the duties imposed by the legislation on the lawyers involved.[[3]](#footnote-3)
3. Subsequent correspondence between solicitors indicated that the DLA was seeking costs whereas MK was suggesting that there should be no order on the basis that the appeal had been dismissed on the ground of waiver which neither party had raised. It was directed that the parties should lodge written submissions as to costs by 16 May 2024.
4. However, MK’s solicitors then informed the Registrar that MK had been adjudged bankrupt on 26 March 2024. This was confirmed by the OR who is obviously not in a position to file submissions on costs.
5. Written submissions have been lodged on the DLA’s behalf arguing that in principle, the Court should order: (1) that the orders made by the Court of Appeal should remain, i.e., that MK should pay the DLA’s costs in the CFI and 70% of his costs in the Court of Appeal; and (2) that MK should pay all the costs in the CFA including the costs of the written submissions certified fit for two counsel. In essence, the submission is simply that the costs of the appeal should follow the event.
6. About a month has passed since the deadline for lodging submissions expired. We have not heard from MK and there is no reason to think that any costs submissions will be made on her behalf. We accordingly proceed now to deal with the outstanding costs issues.
7. The proceedings arose because the DLA revoked MK’s legal aid certificate on the ground that she had wilfully failed to disclose her financial resources. MK sought to challenge that revocation by judicial review, arguing that the facts relied on by the DLA ought not to have been taken into account since they were protected by LPP. She succeeded before the Judge but failed in the Court of Appeal and in this Court. MK was thus unsuccessful and the usual rule that costs follow the event should apply. The fact that her LPP argument failed in this Court on the ground of waiver not directly raised by the parties below does not alter the position.[[4]](#footnote-4) Indeed, as this Court held, she would in any event have lost on the true construction of the applicable rules.
8. We note that the DLA has asked for a certificate for two counsel. As the Court has stated on many occasions, it is unnecessary to apply for such a certificate on a substantive appeal before the Court of Final Appeal. Subject to the reasonableness of the fees paid, the Registrar will allow such costs. An application for a certificate is only needed if it is sought to recover the costs of instructing more than two counsel.[[5]](#footnote-5)
9. Accordingly, we make the following Orders, namely:
   1. That the orders for costs made by the Court of Appeal remain in place;
   2. That MK pay the Director his costs of and occasioned by this appeal, including the written submissions as to costs.

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| (R A V Ribeiro)  Permanent Judge | (Joseph Fok)  Permanent Judge | (M H Lam)  Permanent Judge |

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| (Robert Tang)  Non-Permanent Judge | (Lord Phillips)  Non-Permanent Judge |

Jimmie K.S. Wong & Partners, for the Applicant (Appellant)

Written submissions by Mr John Cheung, instructed by the Department of Justice, for the Interested Party “Director of Legal Aid” (Respondent)

1. At §35. [↑](#footnote-ref-1)
2. At §§66-88. [↑](#footnote-ref-2)
3. At §102 *et seq*. [↑](#footnote-ref-3)
4. See *Luo Xing Juan Angela v The Estate of Hui Shi See, Will, Deceased* FACV 32/2007 (8 September 2008) at §4; *SFC v Isidor Subotic* [2023] HKCFA 40 at §8. [↑](#footnote-ref-4)
5. *Hebei Enterprises Ltd v Livasiri & Co*, unrep, FACV 23/2007 (5 December 2008) at §4; *Winnie Lo v HKSAR* FACC2/2011 (6 July 2012) at §10; *HKSAR v Li Kwok Cheung George* (2014) 17 HKCFAR 575 at §31; *HKSAR v Pang Hung Fai (No 2)* (2015) 18 HKCFAR 1 at §§11-12; *HKSAR v* *Chan Kam Ching* [2022] HKCFA 13 at §§20-22. [↑](#footnote-ref-5)