



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. GC 20 OF 2021(IKJ)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND IN THE MATTER OF GCR O.53

BETWEEN:

(1) MAPLES CORPORATE SERVICES LIMITED

(2) MAPLESFS LIMITED

Plaintiffs

AND

CAYMAN ISLANDS MONETARY AUTHORITY

Defendant

IN CHAMBERS

Appearances:

Mr Laurence Aiolfi and Ms Laura Stone of Mourant Ozannes (Cayman)
LLP for the Defendant/Applicant

Mr Paul Bowen KC of Counsel and Mr Adam Huckle of Maples & Calder
(Cayman) LLP for the Plaintiffs.

Before:

The Hon. Justice Kawaley

Heard:

31 March 2023

Ex Tempore**Judgment Delivered:** 31 March 2023**INDEX**

Application by respondent to judicial review proceedings to embargo publication of the final judgment-open justice principle-Cayman Islands Constitution Order section 7 (9), (10).

EX TEMPORE JUDGMENT**Introduction**

1. The Defendant in this matter applies by Summons dated 31 March 2023, today, for the following most significant relief:

“2. That the judgment in this matter, which was formally delivered on 30 March 2023 should not be uploaded to the Register of Judgments or otherwise published for a period of seven days from the 30th March 2023.”

2. The application also originally sought to reopen my previous direction that the judgment should be published¹, and I agree to do that, and so the need to appeal my earlier direction as to publication in the ordinary course did not arise.

The judgment embargo application

3. The Application is supported by the Second Affidavit of Cindy Scotland sworn on today’s date, the deponent being the Managing Director of the Authority. The Affidavit seeks to support the application on grounds that I would hopefully fairly summarize as follows. Concern is expressed that harm will be caused to the financial services industry in the Cayman Islands if the judgment is published before the Authority has had an opportunity to inform and consult additional Authorities about its contents.

¹ Judgment dated 30 March 2023, page 109 n.13.

4. The nature of harm that will flow is understandably not particularized but I hopefully do not do the complaints an injustice by summarizing them as follows. The Cayman Islands is presently in a very delicate international regulatory position because of being placed on a grey list. And it is said that the fact that the Grand Court has decided a judicial review application in favour of two service providers, by adopting the construction of Regulation 12 of the Anti-Money Laundering Regulations that the service providers contended for, will in some way damage the regulatory reputation of these Islands.

Governing legal principles

5. From the time that the embargo issue was first canvassed in response to a draft of the judgment, the Plaintiffs have heavily relied on open justice principles² and I myself have been deeply concerned about the implications of this application for open justice. It has to be said that the notion of stifling the publication of a judgment in relation to proceedings that have taken place in open Court reviewing documents that have only to a very limited extent been redacted finds no precedent anywhere.
6. The Applicant, the Authority, has not been able to identify any judicial authority which comes close to supporting the idea that it is legally possible to contend that a judgment of this nature should not be published for even a short time, after having been delivered, because some unparticularized harm may flow from the fact of publication.
7. The legal principles which come into play logically start with the Cayman Islands Constitution Order and section 7 which contains the constitutional version of the open justice principle. Section 7 provides:

² Reliance was placed on *R (Mohamed)-v-FCO* [2011] QB 218, and various passages including Lord Neuberger's following observations:

"133. The question whether a passage in a judgment should not be made available to the public on the sole ground that it would be contrary to the public interest is a fortiori a matter for the court. What is included in, or excluded from, a judgment is self-evidently a matter for a judge, not a minister. It is another aspect of the separation of powers that the executive cannot determine whether certain material is included in, or excluded from, the open material in a judgment. That must be a decision for the judge giving the judgment in issue, subject of course to the supervisory jurisdiction of any competent appellate court."

“(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court—

(a) may be empowered by law to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of minors or the protection of commercial confidence or of the private lives of persons concerned in the proceedings; or

(b) may be empowered or required by law to do in the interests of defence, public safety, or public order”

Merits of application for embargo on publishing this Court’s 30 March 2023

8. In my judgment, there is no ground that falls within those exceptions which has been advanced by the Authority in support of the form of relief it seeks today³. The Authority relied on the case of *R (Mohammed) v FCO* [2011] 2 QB 217 and the principle that the courts should show deference to the Executive’s judgment on matters such as foreign policy or national security. I accept that that principle is broad enough to apply to matters such as those with which the Authority is charged with dealing with. However, the basic threshold for that judgment being respected is that the Court should be able to clearly identify that the relevant assessment that is being made is indeed one which the relevant public authority is uniquely qualified to form a final and definitive judgment on. As Mr. Bowen KC pointed out, it is clear from the same case that in fact it is for the courts to ultimately decide whether or not the interest of open justice should prevail over some other competing public interest.
9. In my judgment the need to balance competing interests (with open justice) does not arise in the present case because the interests that are recognized by section 7 (10)(b) (defence, public safety, public order, are not engaged by the present application). I accepted in the course of argument, that

³ In the course of argument it emerged that the an embargo was not being sought simply for a fixed period of seven days to enable consultations to take place to prepare a considered response to the Judgment, but the right to seek a further indefinite embargo was expressly reserved.

the Court does have a flexible jurisdiction to postpone publication of a judgment for a limited time. In fact, earlier in this case, at the interlocutory stage, I took the initiative with a view to promoting settlement to postpone publication of two interlocutory judgments. That was very much the Court exercising its own assessment as to where the balance lay between the interests of justice and the promotion of a potential settlement and the publication of judgments that were interlocutory in nature and in relation to hearings which had taken place in Chambers⁴.

10. In the present circumstance, on the other hand, we are dealing with the question of should a final judgment that has been delivered technically in open Court⁵, following an open Court hearing in proceedings that had been afoot since 2021, should be published or not. In my view, there is no proper justification for postponing publication especially in circumstances where the applicant Authority is not even willing to concede today that publication should be limited to seven days. Had the application been made on that basis, I would have been persuaded to accept it, because I would have had no anxiety that the Authority was seeking to make major incursions into the open justice principle⁶.
11. Instead, the position is, as Mr. Bowen KC rightly submits, that were this Court to embargo publication in circumstances where in effect the right to seek an indefinite embargo is being asserted by the Applicant, the Court would risk seriously undermining the standing of these Courts.
12. In reality, the standing of this jurisdiction as a jurisdiction which is subject to the rule of law, necessitates that when there are legal proceedings involving public authorities, decisions may be made against them. Decisions which may ultimately be held to be wrong, or may ultimately be held to be right. But our system of governance requires that judgments should be published as soon as they are delivered, absent truly “*extreme circumstances*”, as is made clear in the *Mohamed* case at paragraph 41, and that is simply part of the framework within which public authorities and citizens have to operate.

⁴ I.e. matters contemplated by section 7 (10) (a) of the Bill of Rights.

⁵ No hearing to hand down judgment took place.

⁶ As I indicated in the course of argument, and contrary to the view I expressed at page 109 note 13 of the Judgment, the fact that the Authority wished to consult with other public sector agencies before the Judgment was published overrode considerations as to whether or not such consultations should have already taken place sooner. The need for such consultations to enable an appropriate public response to be given to the Judgment to my mind fell within the parameters Court’s very limited jurisdiction to temporarily postpone publication of a final judgment following a trial in open Court “*in the interests of justice*”.

13. And it is for these reasons that I refuse the application to embargo publication the Judgment.

Leave to appeal/interim stay to enable the Defendant to renew its application for leave to appeal and a stay of this decision pending appeal.

14. It seems to me that I am bound to, on the basis of the decision I have just given, refuse leave to appeal. I assume you seek leave to appeal orally, against that ruling.

[Counsel confirms leave to appeal is sought]

15. I decline to grant leave because it seems to me, rightly or wrongly, that there is no arguable ground of appeal against what is effectively, a case management decision based on the open justice principles which are well settled.

16. But it does seem to me that as a matter of principle your client should be given an opportunity to seek an embargo from the Court of Appeal. It is important to be practical and to take into account how much inconvenience will be occasioned to not just the Authority but the Court of Appeal, if I were to grant a shorter stay.

17. I stay my decision that the Judgment should be published for seven days to allow the Authority, if so advised, to apply for a further stay.

18. And I should add as I think I have already indicated in my reasons for decision, that had the application been simply for a seven day embargo and nothing more than that, I would probably have been inclined to grant such relief. The stay that I am granting might seem counterintuitive, but it is not in fact entirely inconsistent with the way in which I view the matter overall.



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT