CA on appeal from the High Court Mayor's and City of London (His Honour Judge Marr Johnson) before Pill LJ. 22nd November 2002.

JUDGMENT : **LORD JUSTICE PILL**

1. This is an application for permission to appeal against the judgment of His Honour Judge Marr Johnson sitting in the Mayor's and City of London Court on 29 July 2002. The learned judge acceded to an application on behalf of the defendant in a personal injury action that there was no case to answer. The learned judge reached the conclusion that the case of the claimant, Mr Hassan Youssif, must inevitably fail. The judge stated (at page 6 of his judgment): *"I turn, therefore, without more ado, to the matter which I consider raises insuperable problems for the claimant and that is the issue of causation."*

2. The judge concluded that indeed it was an insuperable problem. At that stage of the trial the judge had before him a number of medical reports which he treated as evidence and which included a joint statement (at page 95 of the bundle) agreed between Mr Robert Quiney, who had advised the claimant, and Professor Valerie Lund, who had advised the defendant.

3. The claim is one of alleged clinical negligence by the defendant. The judge expressed his conclusion upon the evidence in this way. At page 8 of the judgment he referred to the evidence of Mr Quiney and Professor Lund, and he stated that Mr Quiney*: "... feels that there is a bilateral reduction in the nasal airway, but both of them go on to agree that the sensation of nasal congestion is unfortunately a common one and, I would emphasise, often unrelated to general mechanical obstruction of the nose."*

4. Having summarised the evidence in that way the judge (at page 10) dealing with this issue, stated: *"So here once again it seems to me that the claimant is inevitably doomed to fail on the issue of causation, quite apart from any other difficulty in the case."*

5. The applicant appeared in person at the trial. He had previously received professional advice through the Legal Aid Scheme but legal aid had been withdrawn. His grounds of appeal appear at pages 9 and 10 of the bundle. It is submitted that the learned judge*: "... misread and misinterpreted the report of Mr Quiney, the claimant's ENT surgeon, and the joint statement from Mr Quiney and Valerie Lund, the Defendant's Rhinologist, and erroneously concluded that the Claimant was bound to fail on the issue of causation. That conclusion was one that was not open to him to make an a submission of no case to answer."*

6. Since the dismissal of his claim the applicant has obtained further medical reports, including one from Mr Queeny, which he seeks to put in evidence. There is also a report from Mr East, who I am told is the senior surgeon responsible for organising the work of other surgeons, and it was under Mr East's supervision that a successful operation was conducted upon the applicant in 1996.

7. This case is full of difficulties from the applicant's point of view. The difficulties were underlined by the judge. Nevertheless, the applicant submits that he did not in the circumstances have a fair trial; the judge ought not to have concluded the case in the manner he did, and there was, and is, evidence to demonstrate that arguably there is a causal link between the conduct of the operation and continuing symptoms. The applicant says that had he been warned of the risks in the operation conducted by the defendant he would not have undergone the operation.

8. The applicant further claims that the medical notes of the defendant (beginning at page 97 of the bundle) of which I have this morning received from the applicant a typed transcript, are misleading, and are shown by Mr East's report to be misleading. I find it impossible to make any judgment about that without a proper written explanation from the applicant as to the claim he is making.

9. The applicant is plainly at serious risk in costs. I have put that fully to him and I believe he understands it. Moreover, taking the case at its best, the claim does not appear to me on the medical evidence presently available to be a large claim even if successful. The applicant should ponder very carefully whether to proceed with the permission which I propose to grant to him. He says that the Bar pro bono unit may assist him if permission is given, and he would also welcome an opportunity to have alternative dispute resolution by way of mediation with the professional body representing the defendant. Of course if there is no merit in an application then it will be refused and that will be an end of it. But there are aspects of the trial which give rise to concern. The judge, in an admirable attempt to simplify and shorten proceedings, may have created further problems. The points set out in

grounds 8 and 9 of the grounds of appeal are in my view arguable. There is difficulty in concluding what the effect of Dr Queenie's evidence before the judge in fact was. If the judge was to dismiss it and find there was no case, the evidence of Mr Queenie arguably required further consideration and a reasoned explanation as to why his view as to causation was to be rejected. It is clear that Mr Queeny has cooperated with the applicant to the extent of providing a written report which he seeks to put in evidence. He also says that the judge declined to hear further evidence he wished to call from Dr Kamami on the ground that he could not prove that Dr Kamami was a doctor; and he seeks to put in evidence which establishes that.

10. I can well understand the difficulties of the judge. The case has been presented by a litigant in person unfamiliar with legal procedures, and, if I may say so, because of his inexperience, had not helped himself sufficiently by setting out arguments before the court. That is still the position in that some of the points he seek to make are not sufficiently explained in the documentation. I have explained to him, and I believe he understands the need to put his points in writing and how the documents in the bundle in his submission relate to each other and create the case which he submits exists.

11. I underline the extreme difficulties faced by the applicant, but in my judgment it arguably was not satisfactory that his case was disposed of in the manner it was, and I propose to grant him permission to appeal. He has told me he will in that event seek assistance from the Bar pro bono unit. If, as he says, this is a matter of principle which, regardless of the potential financial liabilities he is determined to pursue, then the prospect of mediation appears to me to be a sensible one in that he may be satisfied with some fuller explanation given on behalf of the defendant. His complaint is that the court was, because of his, the applicant's, ignorance, misled as to the true position and his case did not received attention which it should have received.

12. Accordingly I grant leave. The application to call fresh evidence will be adjourned for consideration by the court hearing the appeal. I give a time estimate on this appeal of three to four hours. That should be reviewed upon those appearing for the defendant making their views known and of course if any attempt at mediation is first to be made.

(Applications granted; no order for costs).

The Applicant appeared in person
The Defendant did not attend and was unrepresented