On appeal from QBD (His Honour Judge Weeks QC) before Ward LJ, Chadwick LJ :20th May 1999

JUDGMENT : LORD JUSTICE WARD:

1. This is an application for permission to appeal an order made by His Honour Judge Weeks QC, sitting as an additional judge of the High Court on 11 March 1999. The order under attack is in these terms:
   "1. The Plaintiff [the applicant before us] within 3 weeks from today or the conclusion of his Appeal, whichever is the longer, submit to the Defendants and the Court a list of six persons of any origin, of any nationality, wherever living who would be acceptable to him as a mediator.
   2. The matters be adjourned generally with liberty to either party to restore on 7 days notice."
3. There was then an order for costs and a refusal of leave to appeal.
4. That was the judge's second attempt to deal with matters in that way. On 28 January 1999 he had adjourned the summons for directions "for alternative dispute resolution to be explored". He again directed both sides to draw up their list of six possible mediators. The judge took the view that he was satisfied that this was a case where alternative dispute resolution was appropriate. The applicant contends that he had no jurisdiction to do so, there was no power, there was no justification in law and there was no source of law giving him that authority. We must analyse that submission.

5. The essential part of the order was the adjournment of the summons for directions. The judge has an inherent power to adjourn. There can be no question about his jurisdiction to do so. He can adjourn on terms if they are to be imposed. In this case the judge made it plain in his judgment, having clarified a possible misunderstanding about his previous order being limited to mediators of Ghanaian origin in Bristol, that there was no such limitation. The essence of his judgment is this: *"At the moment I am not prepared to proceed further with the amended summons for directions until the alternative dispute resolution has been explored because this seems to me a case eminently suitable for alternative dispute resolution and not really suitable for the courts except as a last resort."*

6. In my judgment the judge was not imposing alternative direction, he was not, as Dr Agodzo contends, ordering him to participate in ADR. He was facilitating the possibility of ADR by requiring each party to put forward a list of names from which some common ground might emerge, and from that list of names someone suitable might appeal to both parties at the later stage in the proceedings when they might consent to undergo mediation process.

7. This was not an order directing ADR, it was an order encouraging it and facilitating it. The direction was, in my judgment, not intended to be compulsive, but facilitative. In the event the matter goes back before the judge, he will have an opportunity to consider what course of action should be taken in the light of the matters as they then appear to him.

8. By that time there will be several changes. One is that the new rules will have come in to effect. Under part 51 of the Civil Procedure Rules, rule 15.1, it is provided that when proceedings come before a judge, whether at a hearing or on paper, for the first time on or after 26 April 1999 he may direct how the CPR are to apply to the proceedings and may disapply certain provisions of the CPR. He may also give case management directions which may include allocating proceedings to a case management track.

9. Mr Agodzo submits that the transitional arrangements do not permit the court to implement the new rules if the case has already once been considered by the judge. It is not necessary for us to rule on that submission but I say strongly that it is not the way I read that provision. What the rules are intended to convey, as I understand them, is that on the first occasion that the case comes back before the court after 26 April 1999 that first return to the court's attention is the opportunity for the court to consider to what extent the new rules will apply to the old case. That is all it means. Consequently, even if Mr Agodzo was successful in his application, even if he was successful in his appeal, even if the order were set aside after months and great expense and time, nonetheless Judge Weeks would then be empowered to decide whether or not to apply the new rules to this old case. If he chose to apply them he then had a fresh power, confirmed by rule 26.4, to stay the proceedings of his own initiative if he considers that alternative dispute resolution is a way forward.

10. There is another new factor in this case. The case concerns a squabble about the rules and the powers of the members of a club to operate within the rules, the club being the Ghanaian Association of Bristol. The applicant is, or perhaps was, a member of that Association. He has been expelled but wishes to challenge the legality of his expulsion.

11. When His Honour Judge Weeks ruled that there was a cause of action disclosed on the pleadings that the club was still in existence. It has now been dissolved by the remaining members. Dr Agodzo would seek leave to amend in order to challenge that dissolution. That may be so, but when the matter comes back before the judge the judge will have an opportunity to consider whether or not it might be an abuse of the process of the court to permit litigation which may have no purpose other than the satisfaction of an academic point of interest and concern passionately held by the plaintiff. The judge may be of the view that there is nothing in the claim to support damages claimed for distress. He may consider that, if all that is left is the legality of certain steps in a club which the remaining members have wished to dissolve with no funds to distribute, whether or not it is an abuse of the process to continue the matter any further. He will also have the opportunity to consider whether it will be worth pursuing the attempt at alternative dispute resolution if the plaintiff so firmly sets his face against it, as he has set his face against our attempts to enable the Court of Appeal's service to operate. We offered him through our Court of Appeal office the Bristol Mediation Service, telephone no 0117 904332, ref Mr Tony Watkin. It may even have been that it could have been done through our office at our expense, but Mr Agodzo emphatically refused. If that remains his intransigent view, although it is entirely a matter for Judge Weeks, the judge may conclude that his best efforts have been set at nought and that he must invoke what other procedures are open to the court to resolve this burning question, perhaps only of academic interest.

12. This is an utterly hopeless application with no prospect of success. I would, therefore, dismiss it.

LORD JUSTICE CHADWICK:

13. I agree that this application must be dismissed for the reasons given by my Lord. I add only these words to emphasis what he has said.

14. His Honour Judge Weeks may need to consider in due course what further steps should be taken if, in the future, it becomes apparent that ADR is simply not going to be a viable means of identifying or resolving the disputes between Dr Agodzo and the other members of the Bristol Ghana Association. It seems to me that if that situation should arise, it would be open to the judge to reconsider in the light of events which have occurred since 17 July 1998 (the date on which he declined to strike out these actions on the facts as they then were) whether the continued pursuit of these proceedings ought properly to be regarded as an abuse of the process. That would of course be entirely a matter for him. But if, as seems to be the case, the Association has been, or may have been, dissolved and there are no funds to be distributed amongst the former members, then he might well think it pertinent to consider what possible interest is served by the continued pursuit of these proceedings by Dr Agodzo.

Order: Application dismissed.

DR AGODZO appeared in person.
The Respondent did not attend and was not represented.