

CA on appeal from QBD (Mr Justice David Steel) before Clarke LJ; Kay LJ. 16<sup>th</sup> July 2001.

**LORD JUSTICE CLARKE**

1. It is not necessary for us to give any detailed judgment on this application because we have reached the conclusion that we should adjourn the application to be heard on notice with the appeal to follow if permission is granted.
2. I would just simply like to add this. The reason that, for my part, I have thought that is an appropriate approach is that the application does potentially raise a number of points of importance, which include the following:
  - (1) whether Article 6 of the European Convention on Human Rights applies to applications for permission to appeal from arbitration awards under section 69 of the Arbitration Act 1996;
  - (2) if so, what is required by way of reasons from judges who consider such applications;
  - (3) how a party who says that a judge has not given reasons or adequate reasons should challenge them;
  - (4) how any such right of challenge, presumably by way of appeal under sections 6(1), 7(1)(a) and 9(1) of the Human Rights Act 1998 should be mounted;
  - (5) what is the correct approach of this court if it concludes that a judge in such a case has failed to give reasons, or adequate reasons, and that that failure was an infringement of a party's Convention rights under Article 6; and
  - (6) what is the basis of the jurisdiction of this court, if any, having regard to section 69(6) and (8) of the Arbitration Act 1996, and the decisions of this court in *Aden Refinery Co v Uglan Management Co Ltd* [1987] QB 650 and *Henry Boot Construction v Malmaison Hotel Ltd* [2001] QB 388?
3. I would just add, with regard to these last two points, that I for my part do not think that this court could possibly have jurisdiction to entertain an appeal from the judge's refusal to give permission to appeal against an arbitration award having regard to those subsections. Any such jurisdiction must, as I see it at present, be limited to reviewing the question whether the judge gave reasons, or possibly adequate reasons, to satisfy the parties' Convention rights to a fair "trial" under Article 6 of the Convention. In this regard I understand from Mr Plender that the owners did not invite the judge to give further reasons or suggest to him that the reasons which he has given to date amount to an infringement of their Convention rights by him. It appears to me that, before any application is heard, the owners should state in writing whether that is the position or not and give the reasons why they failed to invite the judge to reconsider his reasons.
4. Finally, I have not thus far changed the views which I expressed in paragraph 3 of the reasons which I gave on paper for refusing the application. For that reason, I for my part do not think it would be appropriate to grant permission to appeal but, because of the potential importance of the matters which I have tried to enumerate and because this point is likely to arise in future, I have reached the conclusion that it would be appropriate to adjourn the application to be heard inter partes so that the court may have an opportunity to consider the whole matter and perhaps to give a reasoned judgment in relation to it. I would myself think it would be appropriate that it should be heard by a three member court, either three Lords Justices or two Lords Justices and a High Court judge, and at least one of the Lord Justices should be a Lord Justice with commercial court experience.

**LORD JUSTICE KAY:**

5. I agree.

**Order:** Application adjourned. Costs reserved.

MR RICHARD PLENDER QC (Instructed by Ince & Co, Knollys House, 11 Byward Street, London EC3R 5EN) appeared on behalf of the Applicants. The Respondents did not appear and were unrepresented.