Neutral Citation Number: [2018] EWHC 2218 (Comm)

Case No: CL-2017-000646

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings,
London, EC4A

Date: Thursday 12 July 2018

**Before** :

**Sir Jeremy Cooke**
**Sitting as a Judge of the High Court**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **ASSET MANAGEMENT CORPORATION OF NIGERIA** | **Claimant** |
| **- and –** | |
| **QATAR NATIONAL BANK** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -

Digital Transcription by Marten Walsh Cherer Ltd.,
1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

- - - - - - - - - - - - - - - - - - - - -

**MR. DELE OGUN** (instructed by **Akin Palmer LLP**) appeared for the **Claimant**
**MR. JERN-FEI NG QC** (instructed by **Eversheds Sutherland International LLP**) appeared for the **Defendant**

Hearing dates: 12 July 2018

- - - - - - - - - - - - - - -

# JUDGMENT APPROVED

**Sir Jeremy Cooke:**

*Introduction*

1. The Court is here concerned with an application made by the Claimant (to whom I shall refer as AMCON) on 2 February 2018 to set aside the order of Carr J dated 17 January 2018 and made on paper. The learned judge dismissed an earlier application dated 21 December 2017 to set aside an order which she had made on 18 December 2017, also on paper, dismissing AMCON's section 68 challenge to an award of three arbitrators dated 20 September 2017. By an order of Cockerill J dated 28 March 2018, an extension of time was granted to AMCON to make its application to set aside both orders of Carr J and a hearing fixed for the determination of those applications and, if successful, of the s68 Application.

2. I have come to the clear conclusion that there are no prospects of success for AMCON'S s68 application, as did Carr J and that therefore that the application stands dismissed.

*No prospects of success.*

3. The challenge was mounted under s 68(2)(d) of the 1996 Arbitration Act, namely that the Tribunal had failed to deal with all the issues that were put to it which had resulted in AMCON suffering substantial injustice. It is trite law that, in order to succeed on such a challenge, AMCON must show first that there was a serious irregularity within the meaning of section and second that such serious irregularity is the cause of substantial injustice to it.

4. It is not necessary for me to refer to the authorities which are invariably cited in the context of section 68 applications in any detail. My attention was drawn to the decision of Bingham J in *Zermalt Holdings SA v Nu-Life Upholstery Repairs Ltd* [1985] EGLR 14, to the DAC Report and the dicta of Lord Steyn in *Lesotho Highlands Development Authority v Impreglio SpA* [2006] 1 AC 221 at para. 28, in particular, as well as to the authorities which distinguish between "issues" on the one hand and "arguments advanced", "points made", "lines of reasoning" or "steps in an argument". As all the authorities stress, the section is concerned with issues of due process, not with errors of law or errors of fact and the section only applies "in extreme cases", "where it can be said that what has happened is so far removed from what could reasonably be expected of the arbitral process, that… the Court [should] take action".

5. For a convenient summary of the principles applicable I refer to my own decision in *Biotech International v Siemens* 2015 [EWHC] 355 at paragraphs 12 to 17. AMCON's section 68 application does not approach the threshold required and is, as the defendant to which I shall refer as QNB, submits, no more than a thinly disguised attack on the correctness of findings made by the tribunal on the construction of a contract, in this case a sale and purchase agreement relating to preference shares and the construction of the Articles of Association of the entity in which the preference

shares were held, namely Ecobank. There are no realistic prospects of success in any such application.

6. Carr J took this view initially by reference to the Final Award, the document submitted by AMCON attached to its Arbitration Claim Form which was headed "Remedies claimed and Grounds on which Claims are made" (to which I shall refer as "the Grounds") and the skeleton argument submitted by QNB in support of its application for dismissal of the section 68 application without a hearing. This, she was entitled to do by reason of the terms of Paragraph 08.5 of the Commercial Court Guide, which provides that *"if the nature of the challenge itself… leads the Court to consider that the claim has no real prospect of success, the Court may exercise powers under rule 3.3 (4) and/or rule 23.8 (c) to dismiss the application without a hearing".*

7. An analysis of the nature of the challenge set out in the Grounds and the individual grounds put forward therein, is sufficient to show that there is no basis for a section 68 application.

8. Before setting out the different grounds of challenge, it is convenient to set out what were the agreed issues to be decided in the arbitration. In its skeleton argument put before the tribunal, AMCON identified the issues in dispute between the parties as two-fold, namely the meaning and effect of Article 8 (11) of the Articles of Association of Ecobank and the meaning and effect of Clause 2 of the Contract (the Sale and Purchase Agreement).

9. It was AMCON's case, as set out in that skeleton, that the "plain, clear and obvious" meaning of Article 8(11) was that the preference shareholders had a contractual entitlement to a fixed amount of dividend equal to 4% of their issue price with the option of receiving a higher amount by way of dividend if a higher figure was declared on the ordinary shares. It was said that, where the preference shareholder claimed the higher dividend on the basis of the ordinary shareholders' dividend, that higher figure would not become due and payable earlier than the date upon which the dividend became due and payable to the ordinary shareholders, namely the date when the latter was declared. Where the dividend, however, was only the fixed dividend of 4% of the issue price, this was already determinable in amount and required no declaration of dividend to become due and payable at all. It was equally said that the "plain clear and obvious" meaning of the words used in Clause 2 of the Contract was that only rights attaching to the Seller's Shares at the time of sale on 4 September 2014 (the date of completion of the sale) were sold by AMCON, and that the fixed dividends, which had become contractually due and payable on the preference shares at the time of sale, had become detached from the preference shares from which they derived and constituted separate assets. The skeleton argument went on to advance arguments as to why AMCON's construction of Article 8.11 was correct, why QNB's construction thereof was incorrect, why the latter's case was inconsistent with the relevant provisions of CAMA (a Nigerian statute) and in particular sections 143 and 144, and why the latter's reliance on English cases was misconceived.

10. The Tribunal, in its Award, which is a model of clarity, at paragraph 4, stated that the dispute centred on whether the Preference Dividends paid in 2016 in respect of the Preference Shares formed part of the rights sold by AMCON to QNB under the Contract and hence belonged to QNB; or whether the rights to such Preference

Dividends fell outside the subject matter of the Contract and remained the property of AMCON. It set out the background to the matter to which I need not refer, the relevant terms of the Contract concluded in August 2014 and completed in September, and the Articles of Association of Ecobank.

i) At paragraph 27 the Tribunal, under the heading "the Central Issue" stated that the critical issue which divided the parties was whether, at the time of completion on 4 September 2014, the right to Preference Dividends for the 2013 year, and that part of the 2014 year up to 3 September 2014, had fallen due and owing. AMCON submitted that it had: QNB submitted that it had not. The central question was whether dividends had to be declared by the Board of Directors before Preference Dividends became due and owing.

ii) At paragraph 28, the Award stated that it was common ground that if any declaration of dividends was required, in order for Preference Dividends to become due and owing, no such declaration was made until 2016 and hence that, until that moment, the contingent right to Preference Dividends amounted to a "right attaching to" the Preference Shares which was sold to QNB pursuant to clause 2.1 of the Contract.

iii) At paragraphs 30 and 31, the Award stated that there was no material dispute between the parties concerning relevant principles of Nigerian law, that Nigerian law is a common law system which derives substantially from English law and that English judicial decisions are of high persuasive value on questions and issues for which there is no Nigerian statutory authority or court decision.

iv) At paragraphs 32 and 33, the Arbitrators found that the principles of contractual and statutory interpretation in Nigerian law were materially identical to English law and referred to the parties' reliance on two specific principles in relation to each, namely:

a) that the contract fell to be construed to give effect to the plain, clear and obvious meaning of the terms used and that the *contra proferentem* principle applied only if the words used were ambiguous.

b) That the words of a statute must be given their plain meaning and in considering a relevant provision, the statute must be construed as a whole

11. For convenience, I here set out the terms of Article 8.11 which provided that the preference Shares would carry no voting rights but went on to set out the position with regard to dividends:

> *"The holders of Preference shares shall be entitled to a dividend of 4% of the issue price, or the dividend payable on the ordinary shares of the Company whichever is higher, payable if and when declared by the Board of Directors of the Company."*

12. At paragraphs 35-40 of the Award, the Tribunal set out the rival arguments of the parties on the construction of Article 8.11 of the Articles of Association and

concluded *"unhesitatingly"* that *"the true construction of Article 8.11 is plain, clear and obvious and accords with QNB's submissions."* The Award went on to set out the 5 main reasons for the Arbitrators' conclusion in paragraphs 41 – 62. After setting out *"a number of additional matters which were prayed in aid by the parties, but which in our view do not affect the analysis"*, the Tribunal, at paragraph 64 found "*without hesitation, that no rights to Preference Dividends in respect of the 2013 financial year or in respect of any part of the 2014 financial year had accrued by the time* [the Contract] *had been concluded or completion had taken place thereunder in August – September 2014. For the avoidance of doubt, we conclude that no Preference Dividends for 2013 or 2014 had been earned, let alone become payable by September 2014….. QNB had bought the tree, and with it, the fruits that are ripening on the tree", the fruits being the contingent right to a cumulative 4% dividend which would only become earned and only become payable in the event of a future declaration of dividends."*

The Grounds of Challenge.

13. There were four grounds of challenge set out by AMCON:

    i) failure to apply relevant principles of Nigerian Law.

    ii) Failure to deal with the Claimant's submissions on section 143 of the Companies and Allied Matters Act (CAMA).

    iii) Failure to deal with the Claimant's submissions on the nature of the declaration of dividend required to satisfy section 144(a) of CAMA to avoid the dividend being unlawful.

    iv) Failure to deal with the Claimant's submissions on the nature of the preference dividend.

*Ground 1: Failure to apply relevant principles of Nigerian Law.*

14. There is no basis for this criticism. AMCON had, in its grounds, relied upon a submission made at paragraph 32 of its skeleton argument before the tribunal, citing a principle of Nigerian law set out in *NAB Kotoye v Mrs. FM Saraki*, that, in the face of two possible constructions (emphasis added), it was the duty of the court not only to avoid an unreasonable, artificial or anomalous construction, but to adopt the more reasonable construction. AMCON set out, in that and the succeeding paragraphs its arguments that the construction advanced by QNB led to unreasonable results, matters which were amplified at paragraphs 13 and 14 of its closing argument and page 184 – 185 of the Transcript of the Hearing, but without reference to the principle or the case in question.. Its contention for it section 68 application was that the Tribunal had failed to have regard to this principle

15. This submission cannot stand in the context of the primary submission which was made by AMCON in its skeleton in relation to construction of clauses in a contract, which it set out as an area of common ground between the parties, at paragraph 12 (iv). *"The approach to be adopted in the construction of the provisions of*

*clauses/sections of the Contract is that laid down by the Supreme Court of Nigeria… And the object is to find the 'plain, clear and obvious' meaning of the words used by the parties in the contract".* As already set out, the Tribunal found that the *"plain, clear and obvious meaning"* of Article 8.11 was as submitted by QNB, which meant that the Tribunal found that there were, in reality, not two possible constructions available to it.

16. In paragraph 6 and elsewhere of the Award, the Tribunal stated that it was deciding the issue as an issue of Nigerian law and in accordance with Nigerian law, the issue being that of construction of a contract. In so far as the Tribunal found at paragraph 32 of the Award that the principles of contractual interpretation in Nigerian law were materially identical to English law, there is no room for Mr. Ogun's argument that Nigerian law differs from English law in requiring a Tribunal to look for a more reasonable construction where the Tribunal has already found a meaning which is plain, clear and obvious.

17. The reality of the position is, as Carr J held, that the application is an impermissible challenge on the basis of an alleged error of construction of a contract governed by Nigerian law. As I have already said, and as appears from the terms of the Award, the Tribunal applied Nigerian law as it understood it to be. As foreign law is a question of fact for this Court, what is being complained of is technically an alleged error in fact-finding, not even an error of law, neither of which could give rise to any ground under section 68. Even if the Tribunal had erred in the construction of the contract by applying one principle of Nigerian law and ignoring another, this could not give rise to a valid ground under section 68. The reality is, however, that the Tribunal adopted the very test that AMCON accepted was common ground between the parties as a matter of Nigerian law.

18. It is interesting to note the terms in which Mr. Ogun frequently expressed himself in oral argument. Citations could be repeated, but in his reply, for example, he said that the arbitrators failed to interpret the contract in accordance with Nigerian law. He said that there were principles of Nigerian law which the Tribunal was obliged to apply and that they failed to apply Nigerian law correctly. He said that they applied one principle of Nigerian law and not another. All of this goes to show that this is not, in reality, a complaint which can fall within the boundaries of section 68 at all. There is no question of failing to deal with the issue of construction on the contract. The complaint is that the Tribunal dealt with it wrongly by failing to apply one principle of Nigerian law and in applying another.

19. The Tribunal gave five detailed and lengthy reasons for its conclusion, dealing with the major arguments put forward by AMCON in doing so. It determined the two issues which AMCON identified in its Skeleton as the issues which fell to be determined. It cannot now be heard to say that the Tribunal failed to deal with an issue put to it in its subsidiary argument, if the meaning of the clause was not plain clear and obvious, just because it was not expressly addressed. In fact, it was implicitly addressed by the Tribunal's finding that the plain clear and obvious meaning of the provision was directly contrary to that put forward by AMCON and accorded with that put forward by QNB.

20. Moreover, this line of argument could not constitute an "issue" within meaning of section 68 (ii) (b) in any event. This line of argument could not constitute an issue

within the meaning of section 68(2)(b) because it was at most a line of argument in relation to the issue of the proper construction of article 8.11. It is worth noting that the principle was not even mentioned in AMCON's oral submissions to the tribunal, whether as a principle or by reference to the authority upon which the principle is said to be derived

21. There is no basis for a contention of serious irregularity here nor any basis for a suggestion of substantial injustice. In my judgement the Arbitrators were plainly right in the conclusion they came to, for the reasons they gave and the contrary argument, however well put, was unsustainable in the light of the wording of the Article in question to which they drew attention, namely the words *"whichever is the higher"* which meant that both parts of the clause were subject to the words *"if and when declared by the Board of Directors".*

22. It is wholly unsurprising that the arbitrators came to the conclusion that meaning was plain, clear and obvious. Moreover, recourse to consideration of the reasonable or unreasonable results of the rival constructions would not have helped AMCON in any event because of the paucity and poverty of the arguments advanced as to the unreasonable results of QNB's construction. For those purposes a reference can be made both to the skeleton argument at paragraphs 31 to 33 and to pages 184 and 185 of the transcript.

*Ground 2: Failure to deal with the Claimant's submissions on section 143 of the Companies and Allied Matters Act (CAMA).*

23. This is, as I see it, a bizarre ground to put forward in circumstances where:

    i) in closing, AMCON's advocate described section 143(3) of CAMA as *"a little bit of a red herring"*, stating that his opponents had read a little too much into the reliance that was being placed on it by AMCON. He made it plain that it was not AMCON's case that section 143 displaced the common law principles or laid down a rule of general application which answered the question which the Tribunal had to decide. He said it was simply more relevant to the issues before the tribunal than the English cases that were relied on by QNB, because it recognised that dividends could be due and payable without being declared, contrary to QNB's case.

    ii) The Tribunal dealt expressly with section 143 at paragraph 46 of the Award where it found that the provision was irrelevant in the context of the dispute because the provision itself dealt with the topic of voting rights and nothing more, as had been discussed in argument.

24. Thus, the point was expressly dealt with and wherever the line is to be drawn between "issues" and "arguments advanced" and the like, this was not an "issue" within the meaning of the term as used in section 68(2)(d).

25. There was therefore no failure to deal with an issue here nor any serious irregularity nor any possibility of injustice.

*Ground 3: Failure to deal with the Claimant's submissions on the nature of the declaration of dividend required to satisfy section 144(a) of CAMA to avoid the dividend being unlawful.*

26. The issue was set out in para. 15 of the Award and decided at para 63(a). Section 144(a) provides that, unless a contrary intention appears, the provisions of a company's articles of association on the rights attaching to shares must be construed to mean that *"no dividend shall be payable on any shares unless the company shall resolve to declare such dividend".*

27. AMCON's submission here is also extraordinary, because the Tribunal specifically referred to AMCON's submission that, for the purposes of section 144 (a) *"the contrary intention"* did appear in Article 8.11. The Arbitrators, however, construed Article 8.11 in a manner directly contrary to the construction advanced by AMCON, with the result that no Preference Dividend could fall due under that provision unless and until a declaration of dividend had been made.

28. No question of unlawfulness arose on the Tribunal's findings. It held that the effect of the 2011 resolution of the Ecobank Board of Directors was that the Preferred Dividend fell to be paid in priority to any dividends which might be declared or paid in respect of the ordinary shares of the company and the right to be paid the Preferred dividends should would be cumulative, and thus carried over from year to year until the Company was able to declare and pay dividends. When combined with Article 11.8, this meant that a declaration of dividend in 2016, in respect of ordinary shares, necessarily carried within it, both as a matter of law and as a result of the earlier resolution, a declaration which triggered the rights of the holders of the Preference Shares to Preference Dividends calculated on a cumulative basis at the rate of 4% from 1 January 2013. This appears in terms from section 63(a) of the award, where the tribunal accepted the contentions which had been advanced by QNB, contentions which AMCON's own grounds recite, at paragraph 8 under Ground 3.

29. Contrary therefore to AMCON's submission, the Tribunal did decide between the parties' competing submissions as to the nature of the declaration of dividend required to satisfy section 144 (a).

30. Once again, any failure to decide such a point would not amount to a failure to decide an "issue" within the meaning of section 68 and there could be no question of "serious irregularity" or "substantial injustice".

*Ground 4: Failure to deal with the Claimant's submissions on the nature of the Preference dividend.*

31. It is contended by AMCON that its submission as to the nature of a Preference Dividend was not dealt with by the Tribunal. At pages 100 – 103 of the Transcript of the hearing, AMCON submitted that *"the cumulative preference holder is in the nature of a bondholder and the dividend on the preference share is like interest on debts accruing day by day".* It is wrong however to suggest that this submission was not rejected by the Tribunal in the light of the reasons given by it for its decision on Article 11.8.

32. As its fifth reason, the Tribunal relied upon a number of English law cases which analysed the nature of a Preference Share and a Preference Dividend as a matter of English law, it being common ground between the parties that there was no direct

authority on the subject in Nigerian law. In *Re Wakley* [1920] 2 Ch 205, Younger LJ said this, by reference to what he described as *"the true nature"* of such a dividend:

> *"if the true nature of such a dividend is borne in mind. A cumulative preferred dividend is, in my opinion, correctly described as one which gives to the holder of the preferred share pari passu with all other holders of shares of the same class a right to receive out of a fund of profits made available for dividend under the articles of the company and in priority to the holders of all junior shares in it a sum measured by the percentage rate and period of time over which the dividend has not been paid in whole or in part. The dividend when paid – not being in any true sense in arrear up to that moment – is paid out of the fund then available for its payment for the year or other financial period of the company in which it is paid. It is not paid in respect of any previous period of non-payment – when it was neither due nor payable – it is paid exactly in the same way as is a dividend at the same time paid out of any residue of the dividend fund to holders of ordinary shares in respect of which there has been no distribution for a period as long as or it may be even longer.".*

33. In paragraphs 49 – 61 of the Award, the Tribunal took account of the English authorities in deciding on the true nature of Preference Dividends as a matter of the law of Nigeria, to which reference to the law of England could be made as "highly persuasive authority". The Arbitrators found at para.60 that the true analysis was that:

> *"when dividends were declared in 2016, the amount of the Preference Dividends was calculated by reference to the cumulative 4% rate extending over the whole of the period going back to 1 January 2013 in respect of which no payment had been made; once declared, the Preference Dividends themselves were for, or in respect of, the 2016 (or, perhaps, but this makes no difference, the 2015 financial year)."*

34. Thus, the issue was specifically dealt with and once again, any failure to deal with such a point would not constitute a failure to deal with an issue within the meaning of section 68 and no question of serious irregularity or substantial injustice could arise.

*Conclusion.*

35. The section 68 Application has no prospects of success and is wholly without merit. It is another example of a dissatisfied party to an arbitration seeking to challenge an Award in circumstances where statute does not allow it. Many judges of this court have had cause to comment on this inappropriate use of section 68 in the past.

36. Furthermore, it does not lie in the mouth of AMCON to complain that Carr J decided issues on paper on the basis of the material put before her when AMCON eschewed its opportunity to put in a skeleton argument in opposition to the application for dismissal of its section 68 application on paper without a hearing. The only material AMCON put before the court was its Grounds which, as stated above, gave the judge a clear idea as to the nature of the application made and, even without any submissions from QNB might have been enough for her to take the view that the application could not succeed under section 68. Much the same applies in relation to

the second application made to her to set aside her earlier decision. The judge could only act on the submissions and evidence placed before her.

37. The terms of paragraph 08 .5 of the Guide provide that if the nature of the challenge itself or the evidence filed in support of it leads the court to consider that the claim has no real prospect of success, it may exercise its powers to dismiss the application without a hearing. The Guide goes on to provide that a Respondent can apply within 21 days with a espondents notice seeking the court's determination of the section 68 application without a hearing and serving any skeleton argument not exceeding 15 pages and any evidence relied on. Thereafter the applicant may file a skeleton/evidence in reply within seven days, which AMCON here failed to do following QNB's Respondents Notice, skeleton and bundle of authorities.

38. Carr J applied the correct legal test in dealing with the material before her and, in my judgement, came to the correct conclusion, as appears above. There is no reason why the court should not exercise its powers for summary dismissal on paper where the appropriate test is met and over the years the court has tended to do so more and more in the light of the raft of unmeritorious applications that are made under section 68. For the most part, where such an application was summarily dismissed, my experience was that they were infrequently pursued, although the order made provided for that possibility, as was the case here.

39. CPR 3.3(4) and 23.8(c) referred to in the Guide and the commentary to the latter in the White Book states this:

> *"Where rule 23.8(c) applies the court will treat the application as if it were proposing to make an order on its own initiative. The effect of Para 11.2 is to bring into play rule 3.3… The particular significance of this is that, where the court makes an order on an application, having dealt with it without a hearing on the basis of rule 23.8(c), the right to apply to the court to have the order set aside, varied or stayed conferred by rule 3.3(5) accrues to a party affected by the order"*

40. The Guide itself at para O8.5 (c) provides that "*where the Court makes an order dismissing the application without a hearing the applicant will have the right to apply to the Court to set aside the order and to seek directions for the hearing of the application",* whilst the following subparagraph provides that *"if such application is made and dismissed after hearing, the Court may consider whether it is appropriate to ward costs on an indemnity basis"*

41. Whilst the terms of 08.5(c) of the guide on its wording only gives the right to apply to the court to set aside the order and to seek directions for the hearing, my understanding of the general practice is that where a hearing is sought by party, it would usually be granted by the court unless the underlying application was seen as something akin to vexatious. This is because the Court ordinarily proceeds by way of oral hearing so that parties' positions can be advanced and tested in a manner not always so readily achieved on paper. Questions can be asked and answered which may throw a different light on matters. There is always the possibility of the Court misunderstanding the position without such an opportunity and the English Court tradition has always been one of oral argument and presentation. The exchange between counsel and judge in probing questions and receiving answers is beneficial to

the administration of justice. I do not suggest that there was any misunderstanding in the present case but the form of the first order made by Carr J is not satisfactory because of an inaccuracy in one of the recitals and a degree of ambiguity in her Reasons about the materials she had seen.

42. The end result however is exactly as she held it should be and the applications to set aside her orders are dismissed. The section 68 application remains dismissed and AMCON must bear the costs throughout, the only question being whether or not they should be on the indemnity basis, about which I will now hear any submissions the parties wish to make.

[Further submissions]

43. When it comes to making assessments for interim payments, the court must only order a sum that it is confident will be recoverable on detailed assessment, should such an assessment become necessary. In the ordinary way, parties usually agree the figures without the need for detailed assessment, particularly when an order has been made for payment on account.

44. In the ordinary way, once again when looking at a bill of costs which is not on its face inordinate in size, the expectation is that with recovery of costs on the standard basis, something of the order of two thirds of costs would be recoverable. When one looks at indemnity costs, the figure is usually somewhere nearer 80%. I need to err on the side of caution because I need to be confident that any sum that I award will be one which will be awarded as a minimum by the Costs Judge should matters go so far, and, in those circumstances, the overall figure that I award is one of £75,000.

[Further submissions]

45. It is self-evident that I consider that the application had no prospects of success and therefore an appeal has no prospect of success. In those circumstances, I refuse permission to appeal.

- - - - - -

This transcript has been approved by the judge