

# Basfar (Respondent) v Wong (Appellant)

Case ID: 2020/0155

## Case summary

### Issue

The scope of diplomatic immunity is governed by the Vienna Convention on Diplomatic Relations (the "1961 Convention"). The Supreme Court is asked to determine whether:

- a serving diplomat's employment of a "trafficked" domestic servant at his UK diplomatic residence constitutes the exercise of a "commercial activity", an exception to the 1961 Convention which would prevent him from asserting immunity from civil suit pursuant to the 1961 Convention; and
- in arriving at a determination as to the first issue, the Employment Appeals Tribunal ("EAT") was correct that the judgment of the Court of Appeal and the views of Lords Sumption and Neuberger JSC (the "Sumption Judgment") in the case of *Reyes v Al-Malki* [2019] AC 735 ("Reyes") represent the "current state of the law" given that, in that case, such comments were not central to the issue decided.

### Facts

Ms Wong was previously employed in Mr Basfar's diplomatic household in Saudi Arabia. In August 2016, she was brought to the UK to work in a similar capacity and was provided with a contract stipulating the main terms and conditions of her service. Ms Wong alleges that her conditions of employment amounted to modern slavery. Such allegations have not been proven in these proceedings.

In October 2018, Ms Wong brought certain complaints against Mr Basfar in the Employment Tribunal (the "Tribunal"). Mr Basfar sought to defend those claims on the basis of diplomatic immunity conferred by the 1961 Convention. At first instance, the Tribunal held that Ms Wong's employment and her alleged trafficking by Mr Basfar came within the "commercial activity" exception to diplomatic immunity and held that, had the Supreme Court in *Reyes* been required to make a determination on this issue, it would not have adopted the Sumption Judgment. On appeal, the EAT held that the judgment of the Court of Appeal and the Sumption Judgment represented the "current state of the law" and, accordingly, allowed Mr Basfar's appeal. The EAT also granted a "leapfrog" certificate to provide leave to appeal directly to the Supreme Court.

### Judgment appealed

[\[2020\] UKEAT/0223/19](#)

### Parties

#### Appellant(s)

Josephine Wong

#### Respondent(s)

Khalid Basfar

## **Appeal**

### **Justices**

Lord Briggs, Lord Hamblen, Lord Leggatt, Lord Stephens, Lady Rose

### **Hearing start date**

13 October 2021

### **Hearing finish date**

14 October 2021

### **Watch hearing**

13 Oct 2021 [Morning session](#) [Afternoon session](#)

14 Oct 2021 [Morning session](#) [Afternoon session](#)