

Neutral Citation Number: [2014] EWCA Civ 1263

A2/2012/2196

A2/2013/0244

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE COMMERCIAL AND MERCANTILE COURT**  
**QUEEN'S BENCH DIVISION**  
(HIS HONOUR JUDGE MACKIE QC)

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 3 July 2014

**B e f o r e :**

**LADY JUSTICE GLOSTER**

**Between:**

**BARONS FINANCE LIMITED & ANR**

**Appellant**

v

**AKINWANDE & ANR**

**Respondent**

DAR Transcript of the Stenograph Notes of  
WordWave International Limited  
A Merrill Communications Company  
165 Fleet Street London EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7404 1424  
(Official Shorthand Writers to the Court)

The **Appellant** appeared in person

The **Respondent** did not appear and was not represented

J U D G M E N T  
(As Approved by the Court)

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1. LADY JUSTICE GLOSTER: There are two applications for permission to appeal before me. The first is made in case A3/2012/2196, the case of Barons Finance Limited

and Reddy Corporation Limited against Mr Alexander Femi Akinwande and Miss Patience Ani Bolandale. The application in that case is for permission to appeal against an order made by HHJ Mackie QC on 1 June 2012 in the London Mercantile Court in which he granted the Defendants' applications for permission to appeal the order of District Judge Harris and to set aside the judgment. He then directed that there should be a hearing date of the matter on 6 September 2012 to be heard by HHJ Mackie QC at the London Mercantile Court.

2. The judge gave brief reasons for giving permission to appeal out of time. It is to be assumed that in doing so, the judge, who was very familiar with the matter because he had dealt with a number of Barons Finance cases, exercised his discretion for giving permission to appeal out of time in the same way as he had done in another Barons Finance case namely, Barons Finance Limited, Reddy Corporation Limited v Timmy Makanju [2013] EWHC 153 (QB).
3. The reasons set out in that judgment, which I will not rehearse, address the complaints made by Mr Gopee acting on behalf of Ready Corporation, but not Barons Finance, in relation to this appeal. Mr Gopee complains that human rights are engaged because he has been deprived of an opportunity to argue his case. He complains, amongst other things, that the Defendants had admitted owing the money and that HHJ Mackie QC was simply applying a rubber stamp process.
4. In my judgment, it was well within the discretion of HHJ Mackie QC to allow the Defendants at first instance permission to appeal against a number of County Court decisions, although their application for leave to appeal those County Court decisions was made well out of time. HHJ Mackie QC, as I have said, granted permission to appeal. In doing so, the judge said that the case raised fundamental matters relating to consumer protection legislation. He relied on the fact that a serious injustice was alleged, that the claim had a real prospect of success and that the appeal would not involve an evaluation of detailed questions. The judge took into account on the other side of the scale that the events took place a long time ago and that there should be finality in litigation.
5. Having weighed those factors, the judge decided to grant permission to appeal. Although, as I have said, he made no reference to the specific issues raised in the case before him, it is apparent that the judge had in mind, because he was dealing with many other Barons Finance matters, the considerations which he took into account in the Makanju case where he decided a factually similar issue and described his reasoning in that case for setting aside a judgment on the grounds that it was apparent that the forms and procedures used by the Claimant lenders was not compliant with the Consumer Credit Act, that the transactions were not exempt from the Consumer Credit Act and that the Claimants appear to have conducted business without a licence.
6. In those circumstances, I am satisfied, as was Patten LJ in refusing permission on the papers, that this appeal would not have any real prospect of success and that the judge

was acting within the reasonable ambit of his discretion in granting permission to the defendants to appeal.

7. I turn now to the other case of Barons Finance, A3/2013/0244, in which I originally refused permission on the papers. This is an application again for permission to appeal against the decision of HHJ Mackie QC in the London Mercantile Court when he set aside, upon the application of the Second Defendant, the order of District Judge Harris dated 19 September 2008 and directed that the case would be tried again by the London Mercantile Court, as would an associated or related case for possession. HHJ Mackie QC on that occasion gave directions for service of case statements and disclosure and for permission for expert evidence and directed that there should be a case management conference. He made similar orders in relation to the First Defendant, although he was not present at the hearing.
8. Again, in the circumstances set out in the judge's judgment, I see no prospect of any appeal against that order being successful. This is not a case where Reddy Corporation has been shut out from trial. It will have the opportunity to present its arguments in relation to the points relating to the Consumer Credit Act when the matter comes back before the London Mercantile Court. This is a situation in which the judge was, as I have already said, familiar with relevant matters. It is clear from his judgment that the matter was carefully considered by him. He gave clear reasons for setting aside the orders made by District Judge Harris notwithstanding the length of time.
9. As he said in paragraph 11, he was not concerned on that occasion with trying the case. He was concerned with whether or not the original order should be set aside. He gave clear reasons for doing so, including the fact that the alleged breaches of the Consumer Credit Act were very serious. He emphasised the importance of the issues and the fact that this was not a resuscitation of a dispute long ago resolved, in his view, because he took the view that the real issue relating to allegations of fraud and the Consumer Credit Act had not actually been determined.
10. He was clear that he was not making any findings as to the merits of the case, but he clearly considered that it was appropriate that the original orders should be set aside and that there should be a full trial when the consumer credit arguments and other arguments could be ventilated. Again, in his note on the approved transcript, he refers to the Makanju case and again read that case.
11. In my judgment Reddy Corporation Limited has no prospect on an appeal of setting aside what was, in the event, a discretionary decision made by this very experienced Mercantile judge who had a number of these associated cases before him. In those circumstances, I refuse permission to appeal to Reddy Corporation. If and insofar as this is to be regarded as an application by Barons Finance Limited for permission to appeal, I also refuse permission to it to appeal. As I have said, I have not heard Mr Gopee on behalf of Barons Finance Limited because it is in liquidation.

