

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Cukurova Holding A.S. -v- Sonera Holding B.V. (HCVAP 2012/029)

APPLICATION TO STRIKE OUT NOTICE OF APPEAL
ON BASIS THAT LEAVE TO APPEAL REQUIRED
BUT NOT SOUGHT - APPLICATION TEST -
WHETHER A JUDGMENT REFUSING TO SET ASIDE
AN ORDER WHICH PERMITTED THE
ENFORCEMENT OF AN ICC AWARD
INTERLOCUTORY OR FINAL

Cukurova Holding A.S. (“Cukurova”) filed a notice of appeal against a judgment of the Learned Commercial Judge in which he refused to set aside an order which granted Sonera Holding B.V (“Sonera”) permission to enforce an ICC arbitration award. Sonera applied to have the notice of appeal struck out as a nullity on the basis that leave to appeal was required but not sought.

A single judge of the Court of Appeal determined the matter on paper. Applying *Dallah Real Estate and Tourism Holding Company -v- The Ministry of Religious Affairs, Government of Pakistan* [2010] UKSC, 46 and *Consolidated Contractors International Co SAL -v- Masri 74 WIR 235* the Learned Justice of Appeal Baptiste held that the Judgment which dismissed the Appellant’s application was a final judgment because the issues raised by the application to set aside the order were dealt with at a trial which settled the matters in litigation between the parties. No leave was therefore required. The case of *Pirate Cove Resorts Limited et al -v- Euphemia Stephens et al* Saint Vincent and the Grenadines High Court Civil Appeal No 11 of 2002 was distinguished.

Please note that this decision is being appealed to the full Court.

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