



Civil Appeal No. 17 of 2025

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS
COMPANIES WINDING-UP JURISDICTION
BEFORE THE HON. JUSTICE ANDREW MARTIN
CASE NUMBER 2024: No. 52**

**IN THE MATTER OF BITTREX GLOBAL (BERMUDA) LTD (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 1981**

Before:

THE HON IAN KAWALEY, THE PRESIDENT

THE RT HON SIR GARY HICKINBOTTOM, JUSTICE OF APPEAL

and

THE RT HON SIR JULIAN FLAUX, JUSTICE OF APPEAL

Between:

BITTREX GLOBAL INC

Appellant

- and -

**(1) ANDREW HOWIE, CARMEL KING AND MARGOT MACINNES
as joint liquidators of Bittrex Global (Bermuda) Ltd (in liquidation)**

(2) THE BERMUDA MONETARY AUTHORITY

Respondents

Appearances: **Edward Cumming KC and Kyle Masters of Carey Olsen Bermuda Limited** for the Appellant
Conor Doyle of Conyers Dill & Pearman Limited for the Second Respondent

Heard: On the papers
Close of submissions: 21 April 2026
Draft judgment circulated: 27 April 2026
Date of Judgment: 5 May 2026 (Delivered remotely)

JUDGMENT

IAN KAWALEY P:

Introduction

1. On 10 March 2026, this Court unanimously dismissed the appeal (save as respects one ground upon which the Appellant prevailed but which had no impact on the overall outcome). The appeal sought to challenge various interlocutory decisions made by Martin J in relation to the liquidation of the Company. The Company is believed to be insolvent and the Appellant, as the principal contributory or shareholder, presently has a tenuous economic interest in the Company. Its primary commercial interest in the present appeal appeared to be obtaining an order from the liquidation judge that unclaimed assets should be distributed to it rather than paid into the Consolidated Fund in accordance with the established statutory regime. Achieving such a result would be an extremely unusual outcome in an insolvent liquidation.
2. By Notice of Motion dated 27 March 2026, appending draft Grounds of Appeal, running to eight pages, the Appellant seeks leave to appeal to His Majesty in Council on the following principal grounds:
 - (a) *“The Court of Appeal erred in law in finding, at ¶172 and ¶210 to ¶213 of the Judgment, that, on the proper interpretation of sections 17 and 18 of the Digital Assets Business Act 2018 (‘DABA’), sections 17 and 18 of DABA stipulated that customers of Bittrex Global Bermuda Ltd (the ‘Company’) retained a beneficial or proprietary interest in assets transferred to the Company in connection with Standard Hosted Wallets, regardless of, and notwithstanding, express terms of the relevant agreements (the “Terms of Service”) between the customers and the Company to the contrary...”*;
 - (b) *“The Court of Appeal erred in law in finding, at ¶182 to ¶184 of the Judgment, that, on the proper interpretation of the Terms of Service, the effect of clauses 4.2 and 6.2 of the Terms of Service*

was that, when customers transferred digital assets to the Company in connection with Standard Hosted Wallets, the customers retained the beneficial interest or any other proprietary interest in those assets (rather than transferring to the Company all rights to the particular asset and acquiring, in return, only a contractual right). In making this finding, the Court of Appeal wrongly failed to have regard (or adequate regard) to, or to attribute any meaning to, express words of the Terms of Service...”;

- (c) *“The Court of Appeal erred in law in dismissing the Appellant’s second ground of appeal, and in finding, at ¶199 and ¶ 208 of the Judgment, that the Judge had been entitled to direct that (i) customers who had not previously lodged a proof of debt in the liquidation of the company be automatically admitted as creditors of the company in a specified amount (equivalent to the value of the Standard Hosted Wallet at a particular date and time), and (ii) if, after that process, such creditors had not come forward to seek payment from the liquidation, then the assets to which the Court of Appeal had found they were beneficially entitled and in which they enjoyed a proprietary right should be converted to stablecoin and thereafter converted into fiat and paid into the Consolidated Fund under section 257 of the Companies Act 1981...”;*

Legal test for granting leave to appeal

3. The Appeals Act 1911 (the "**Appeals Act**") governs appeals from the Court of Appeal to the Judicial Committee of the Privy Council. Section 2 provides that an appeal lies (apart from appeals against final judgments or relating to fundamental rights and freedoms under the Constitution):

“(c) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to H[is] Majesty in Council for decision.”

4. Mr Cumming KC commended to the Court the following *dicta* of Waller LJ in *R (on the application of Compton)-v-Wiltshire Primary Care Trust* [2008] EWCA Civ 749 as to the meaning of the words “*general public importance*”:

“77. During the hearing, there was some discussion about the meaning of the word 'general' in the context of 'general public importance'. As Buxton LJ says, it must add something to mere 'public importance'. In some cases, the answer is easy. For example, if the case will clarify the true construction of a statutory provision which applies to and potentially affects the whole population, the issues are of general public importance. But if the issue is of public importance and affects only a section of the population, it does not in my view follow that it is not of general public importance, although it will not be in the first rank of general public importance. Mr Havers QC for the appellant accepted that a local issue might be sufficiently 'general' to be of general public importance but submitted that one could not decide whether it was so merely by taking a headcount of the numbers of people who would be affected by the decision of the court. He may be right although he did not explain how the general importance of a local issue was to be assessed. It seems to me that a case may raise issues of general public importance even though only a small group of people will be directly affected by the decision. A much larger section of the public may be indirectly affected by the outcome. Because it is impossible to define what amounts to an issue of general public importance, the question of importance must be left to the evaluation of the judge without restrictive rules as to what is important and what is general.”

5. Mr. Doyle most pertinently submitted:

“6. The proper starting point is the observation of Baker P in Sturgeon Central Asia Balanced Fund Ltd v Capital Partners Securities Co Ltd¹ at [14] that the ‘very words great general public importance plainly... indicate a very high threshold’...

9. The recent tendency of the Court is to refuse leave to appeal in order that the Board may decide for itself, on the appellant’s renewed application whether or not it wishes to entertain the appeal see eg Sturgeon Central Asia at [17] HSBC v New Ocean Energy Holdings Ltd [2021] CA (Bda) 21 Civ at [20].”

6. Whether the requirements of section 2 (c) of the Appeals Act are met and leave to appeal to His Majesty in Council should be granted is indeed, as Waller LJ observed in the *Wiltshire* case, an evaluative process to be applied in a flexible manner based on the distinctive features of each case. However, it is equally clear that the test for granting leave in interlocutory appeals to an apex court after appeal rights before an intermediate court have been exhausted is necessarily a restrictive one. I pay particular

¹ Civil Appeal No.14/2017, Judgment dated 6 June 2018 (unreported). This valuable judgment is not presently published online, doubtless due to an administrative oversight.

regard to the cogent *ex tempore* observations of Baker P in *Sturgeon* following seemingly fulsome oral argument:

“17. Whilst there is authority to indicate that the words or otherwise are not to be read with the previous provision in the subsection, it is also clear not only from the wording of the section, but also from a number of Commonwealth cases that the threshold is a high one, and that there must be truly exceptional circumstances to justify this Court in granting leave. In the circumstances therefore, for my part, I would refuse leave. I would do so having said that there were a number of very troubling issues in this case that this Court decided and were resolved in the judgment of my Lord Justice of Appeal Clarke. But, none of those issues seem to me to cross the threshold of carrying a sufficient interest, beyond the interests of the parties, to justify this Court in granting leave to appeal. It seems to me that the Privy Council, like the Supreme Court, much prefer to decide which cases they wish to take on appeal, and in my judgment that matter is better left to them to decide.”

7. The same passage was cited with approval by Clarke P in the *New Ocean* case. Another important strand of the test was identified by Sir Anthony Smellie JA in *Junos-v-The Governor of Bermuda* [2024] CA (Bda) 19 Civ:

“34. It follows, as was also stated in Siddiqui², that leave should not be granted ‘where there is, on proper analysis, no genuine dispute as to the applicable principles of law’ but where what there really is, is a ‘dispute as to the applicability of settled principles of law to the facts of the case in dispute’”.

8. The 2nd Respondent’s counsel also aptly submitted as follows:

*“...The point must at a minimum be seriously arguable, since, as observed by Kawaley JA (as he then was) in *Hewey v Legal Aid Committee* [2024] Bda LR 70... at [11], a point which is ‘not a seriously arguable one can hardly be an important one in the requisite statutory sense.’*

9. Leave is ordinarily granted by this Court only where it is clear that either (1) a point of public importance beyond the ambit of the case before the Court arises, or (2) in exceptional circumstances, where a point of significance to the parties alone has been raised. When in doubt, leave

² *Siddiqui v Athene* [2019] CA (Bda) 2 Civ.

applications will be refused on the basis that the Privy Council can best decide for itself what points it wishes to decide even where this Court does not consider its guidance is required. This restrictive approach is ultimately required in relation to interlocutory appeals to an apex court because such appeals will inevitably cause material delay to the proceedings before the first instance court. Civil litigants have a fundamental right to have their civil rights and obligations adjudicated “*within a reasonable time*” (Bermuda Constitution, section 6(8)).

Disposition of application

10. The Appellant seeks leave to pursue three main grounds of appeal. The first ground, the proper interpretation of section 18 of the Digital Assets Business Act 2018 (“DABA”) is on its face potentially a point of general public importance. The proper interpretation of the statute considered for the first time is arguably of “*great general or public importance*”. However, the point was relied upon to impugn the validity of an aspect of the Judge’s decision which was upheld on other grounds in any event. The substantive complaint was that he ought to have permitted distribution of the unclaimed assets to the Appellant because the Company’s customers had no proprietary interest in them. As Sir Julian Flaux JA concluded in his leading judgment on this appeal:

“191 ... what should be emphasised finally in relation to the first ground of appeal is that, on the basis that, even if the customers did not have a proprietary interest in the assets, the judge was correct to refuse to order any distribution to the shareholder before the claims of the customers had been satisfied. Therefore, in a very real sense, the first ground of appeal is academic because the judge’s decision was the right one, irrespective of whether the customers had a proprietary interest in the digital assets. Notwithstanding that it is academic, it was sufficiently arguable for leave to appeal to be given, though for the reasons I have given, I am firmly of the view that the first ground should be dismissed.” [Emphasis added]

11. Concurring, I found (at [213]) that the construction the Judge adopted was “*ultimately clear*”. Accordingly, while the statutory interpretation point was arguable for the purposes of seeking leave to argue it before this Court, it has now been decided against the Appellant in unambiguous terms and found to be academic in any event. In my judgment the point is not seriously arguable, and fails to meet the “*great general or public importance*” threshold on that account. Because the point is academic to

the result of this Court's dismissal of the appeal, there can be no reason for "otherwise" granting leave to appeal in respect of this ground.

12. The second and third grounds of appeal clearly do not justify the grant of leave to appeal as freestanding grounds. The second ground challenged the correctness of the construction of the contractual documents between the Company and its customers and the findings that the customers retained proprietary rights. The proposed arguments are relevant to the particular documents in this case and concern the application of settled legal principles rather than any principles of general application or public importance so this ground fails to meet the test referred to by this Court in *Junos* at [34] and referred to above.
13. The third ground was not addressed in the Appellant's submissions for leave to appeal, no doubt because it relates to the discretionary decision of the Judge to permit the automatic proof of debts. Obviously, as a freestanding ground it does not meet the strict requirements for leave which are engaged by the present application. In any event, Flaux JA held and this Court decided:

"199. In the circumstances, there is no arguable basis for challenging the judge's exercise of his discretion under Rule 64(1) to order automatic admission..."

14. In the Appellant's reply submissions, complaint was made that the 2nd Respondent had not engaged with the detailed points supporting the main draft grounds of appeal. That complaint might be a valid one if this Court was required to evaluate whether arguable grounds existed for granting leave to appeal from a decision of the Supreme Court. The whole point of the narrow leave filter created by section 2 (c) of the Appeals Act is to require a broad evaluative view to be taken of whether the application falls within the ambit of the narrow range of cases which justifies this Court (rather than the Privy Council itself) granting leave to appeal to His Majesty in Council.
15. Applying the established principles to a section 2 (c) application it is clear that the present application does not meet the required threshold for the grant of leave. However, subsidiary reliance may also be placed on another consideration in the liquidation context. A winding-up is carried out having regard to the best interests of the majority of the stakeholders which generally are to maximize the returns they are able to receive from the liquidation estate. Courts generally assume that such stakeholders are the best judges of where their commercial interests lie. Since the

Appellant seems unlikely to be entitled to receive any distribution from the liquidation, it is a most unsuitable party to advance the case for delaying the prompt completion of the liquidation at the ultimate expense of those who are truly economically interested in the liquidation estate.

16. The understated submission made by Mr Doyle in relation to the second proposed ground of appeal is relevant to the entire leave application:

“BGI would also advance various theoretical points about the interplay between the customers' contractual and proprietary rights in the liquidation (see Ground 2.1). To the extent such concerns actually arise in practice, they are matters to be resolved by the liquidation judge in the first instance. They are, moreover, of no proper concern to BGI. The aggregate interest of the outstanding customer cohort, whether viewed as contractual or as proprietary, exceeds the value of the remaining assets. On neither footing will there be a surplus for the sole shareholder.”

17. The present case is very far removed from the situation where the main stakeholder(s) in a liquidation can assert the right to determine that a further appeal is appropriate because determining a commercially significant interlocutory point through a final appeal is where their best interests lie.

Conclusion

18. For these reasons, I would refuse leave to appeal to His Majesty in Council and, subject to hearing counsel if required, order the Appellant to pay the 2nd Respondent's costs of the present application.

SIR GARY HICKINBOTTOM JA

19. I agree.

SIR JULIAN FLAUX JA

20. I also agree.