



Civil Appeal No. 3 of 2026

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. JUSTICE ANDREW MARTIN
CASE No. 11 of 2025**

Before:

THE PRESIDENT, SITTING AS A SINGLE JUDGE

Between:

CORY AMIR BROWN

Appellant

- and -

THE HUMAN RIGHTS COMMISSION

Respondent

Before: Ian Kawaley, P (sitting as a Single Judge of the Court)
Heard: On the papers
Date of Ruling: 13 May 2026

*Application for waiver of Court fees-Access to justice- Bermuda Constitution section 6 (8)-
Rules of the Court of Appeal 1965 Order 2 rules 32 and 33*

RULING

KAWALEY, P:

Introductory

1. On 15 December 2025, Martin J dismissed the Appellant’s application for judicial review of the Respondent’s decision to summarily dismiss the Applicant’s complaint without investigation. He found that two procedural irregularities had occurred: (1) failing to provide reasons, and (2) failing to seek representations from the Appellant before reaching the dismissal decision. However, having regards to the evidence before the Court as to the substance of the decision, Martin J found that the errors did not invalidate the decision so as to justify setting it aside. On its face, this decision was entirely consistent with established judicial review principles which, unlike ordinary civil proceedings, are designed to uphold the public interest in good administration rather than to vindicate the personal rights of private litigants.
2. On 26 January 2026, the Appellant filed a Notice of Appeal against that decision and on 2 February 2026 he filed a Notice of Motion seeking an Order waiving fees Order 2 rule 33 of the Rules of the Court of Appeal 1965 (the “Rules”). That was supported by an Affidavit sworn on the same date deposing to having been destitute and homeless since being refused in 2021 the job his Human Rights Commission complaint was focussed on. The street address provided on the Appellant’s Notice of Appeal (my own Google search suggests) appears to be the office of the St John’s Anglican Church.
3. Due to an administrative oversight (which I attribute to the fact that administrative resources available to the Court of Appeal are presently¹ chronically depleted) the 2 February 2026 fee waiver application was only placed before me on 11 May 2026.

Order 2/33

4. The rule the Appellant invokes for a waiver of fees provides as follows:

“2/33 Proceedings by poor persons

- (1) Any party may apply to the Court for leave to prosecute or defend an appeal as a poor person. Such application shall be by notice of motion, supported by affidavit, and shall be served on the other parties to the proceedings. No fee shall be payable on filing any such application.*
- (2) No party shall be permitted to proceed as a poor person unless he satisfies the Court that he has a reasonable probability of success.*
- (3) A person permitted to proceed as a poor person shall not be liable to pay any of the Court fees prescribed by these Rules nor shall he be required to make the deposit or to give the security prescribed by Rules 9 and 10 of this Order.*

¹ These concerns are, I understand, being actively addressed. They are worthy of mention as a reminder of how important the administrative functions are to the ability of the Court to deliver prompt justice to all litigants. These concerns are particularly acute as regards litigants who have claims of considerable human importance but who also lack the resources to employ lawyers to ‘oil the wheels of justice’.

- (4) *The Court may for good cause shown review, rescind or vary an order permitting any person to proceed as a poor person.*
- (5) *The Court may assign a barrister or attorney to represent a party prosecuting or defending an appeal as a poor person.*”

5. If this rule appears archaic this may simply be because it is. It was originally enacted and now harkens back to an era in which citizenship was defined at least in part by reference to personal wealth and legal aid did not exist. The concept of suing as a poor person has been abolished in England and Wales (and doubtless elsewhere as well) and exemptions from filing fees can be made through online applications which are (in most courts) dealt with by Court administrative staff. Only at the UK Supreme Court level does it appear that fee waiver applications are considered by a Registrar, subject to a right of review by a Single Judge of the Court.
6. Under Bermuda’s modern constitutional dispensation, citizens who lack the means to pay Court fees ought not be subjected to the ignominy of having to file potentially public evidence about their impecuniosity with a view to exercising their rights of access to justice under section 6 (8) of the Bermuda Constitution in relation to an appeal as of right against a final decision. While it is appropriate for the Court to be seised of an application for, in effect, legal aid, it seems odd for the Court (as opposed to the Registrar) to be charged with adjudicating fee waiver and related applications.
7. Order2/33 prescribes two conditions which must be met for an order waiving filing fees and/or the deposit and security requirements to be granted. The first is implicit and the second is explicit:
 - (a) proof of genuine inability to pay; and
 - (b) proof of “*a reasonable probability of success*”.
8. In my judgment the Appellant has met requirement (a) but failed to meet (b). The grounds of appeal are not particularised and are therefore impossible to evaluate:
 - “(1) *Error of Law*
 - (2) *Procedural Irregularities*
 - (3) *Misapplication of Legal Principles*
 - (4) *Human Rights Violations/Issues*”
9. However, the grounds are supplemented by a separate document, ‘Appeal Against Judgment by J Martin’ which runs to 54 pages. These include the following complaints:
 - (a) the Judge indicated that he “lost” the Appellant’s original extensive Affidavit and this may explain the judgment’s failure to deal with the evidence;
 - (b) the Respondent did not file a skeleton argument so he was “blindsided” at the hearing;
 - (c) the Judge misunderstood the purpose of the judicial review;

- (d) the Judge ignored procedural errors and his decision was inconsistent with another judge having initially granted leave;
 - (e) it was difficult to make sense of the administrative decision not to investigate his complaint and the public underpinning the power to summarily dismiss complaints had been misconstrued;
 - (f) the evidence demonstrated that the Director of Planning had not fairly dealt with his employment applications and that the Respondent's Executive Officer had not dealt with his complaint in an unbiased manner. This broad topic is addressed at considerable length.
10. As a matter of first impression, the complaints summarised at (a), (c) and (d) seem to be potentially based on the Appellant's misunderstanding of the judicial review process. For instance, it is well established by various decided cases that fair hearing complaints can be 'cured' by the reviewing court hearing an applicant's arguments fully, even if they were not fully heard by the relevant decision-maker. The suggestion that the Judge did not consider all the evidence seems improbable in light of the terms of the Judgment. However, complaints (b), (e) and (f) are difficult to evaluate but appear arguable on their face. The Judge's interpretation of the role of section 15 (8) appears consistent with common sense and legal principle, but does not refer to any previous judicial authorities². But this falls far short of establishing that the Appellant has "a reasonable probability of success". Because an arguable ground of appeal, like an arguable case for granting leave to seek judicial review, merely means a ground that cannot summarily be determined to be fanciful, hopeless or unrealistic. After full inquiry the Appellant's complaints about the Supreme Court decision could still be found to be hopeless after all.
11. This Court seemingly waived fees under Order 2/33 without considering the merits in *Commission of Inquiry-v- Piper et al* [2024] CA (Bda) 6 Civ (at [75], [80 (a)]) and granted a protective costs order due the exceptional public interest in that case. Sir Christopher Clarke P held:
- "81. I regard that approach as appropriate, and necessary in the interests of justice, in view of the extraordinary nature of the inquiry and the public nature of the current disputes. There is a public interest in the Court of Appeal determining whether the Commission was, in effect, unlawful or acted unlawfully on one or more of the grounds relied on by the appellants. That is particularly so where the Commission says that there was no illegality, the judge has held that there was illegality on one basis and the appellants say that there was illegality on two."*
12. It might be thought that reliance was placed by the Court on that case on the more flexible fee-waiving jurisdiction conferred by Order 2/32, which was also mentioned in the same Judgment:

² Eg *Bank of Bermuda Ltd v Minister of Community Affairs and Sport*, Civil Appeal 13/2004, Judgment dated 28 June 2005 (which suggests, *obiter*, that a summary dismissal without affording a hearing was "flawed" without any direct consideration of what section 15 (8) requires).

“74. The fees in question are the fees prescribed in the Third Schedule: Order 2 Rule 32. These fees include a fee for filing the Notice of Appeal and for settling the record. The Court of Appeal has power to dispense with the payment of those fees ‘on account of the poverty of any party or for other sufficient reason’: Order 2 Rule 32 (3).”

13. That rule will be considered briefly below. However, as it does not grant a power to waive the deposit and security requirements at all, the better view is that the strict requirements of Order 2/33 were waived in both respects “*in the interests of justice*” in the *Commission of Inquiry* case.
14. As far as the Appellant’s application for relief from “*fees*” under Order 2/33 is concerned, I would construe his application as implicitly seeking relief from the deposit and security obligations as well. A narrow interpretation is completely nonsensical Should the strict requirements of rule 23 be waived “*in the interests of justice*” in the present case even though there are no exceptional circumstances or wider public interest?
15. The Appellant appears clearly unable to afford the filling fees in order to appeal as of right against the dismissal of his judicial review application seeking to obtain a full investigation of his human rights complaint. The underlying complaint is one of racial discrimination made against a Government Department which refused to hire him (or continue his employment) in his chosen field. By the Appellant’s account, this resulted in his life falling apart. Section 6(8) of the Constitution explicitly guarantees a fair civil hearing within a reasonable time and implicitly guarantees a reasonable right of access to the Court without any unreasonable procedural impediments. In my judgment the circumstances of the present case justify granting a waiver of the usual filing fees, and complying with the usual deposit and security requirements under Order 2/9 and 2/10 “*in the interest of justice*”. However, I would make explicit precisely what interests of justice are engaged here.
16. The Rules are made under the Court of Appeal Act 1964 which for the purposes of the Bermuda Constitution Order 1968 is an “*existing law*”. Section 5 of the Bermuda Constitution Order provides:

“(1)... *the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.*”
17. Order 2/9/, 2/10, 2/32 and 2/33 are made under a general rule-making authority conferred by section 9 (1) of the Act, which provides:

“(1) ... *the President (or any Justice of Appeal appointed by the President for the purpose) may make Rules for carrying this Act into effect, and, in particular, but without prejudice to the generality of the foregoing, for all or any of the following matters, that is to say—*

 - (a) *for regulating the practice and procedure of the Court of Appeal, including all matters connected with the forms to be used and the fees to be payable...*”

18. In *Re First Virginia Reinsurance Ltd.* [2003] Bda L.R. 47, I referenced (at page 9) the fact that in *Raymond v Honey* [1983] AC 1, the “*analysis of the House of Lords was that a general rule-making power could not be construed as a matter of implication as interfering with the right of access to the Court.*” By analogy, and with far greater force under Bermuda law when complying with a positive obligation to construe an existing law in a way which conforms with the Constitution, I find that Order 2/33 must be read as conferring an implied power to disapply the “*reasonable probability of success*” requirement when the circumstances of a case justify such an approach to avoid impairing the right of access to the Court to an unacceptable extent. The critical considerations in the present case weighing in favour of disapplying the usual strict merits requirement are:
- (a) the fact that the Appellant appears to be genuinely unable to meet the requisite financial requirements for pursuing his civil appeal;
 - (b) the fact that the Appellant is seeking to pursue an appeal as of right; and
 - (c) the fact that the appeal appears to be arguable and raises a legal point, the proper exercise of the summary dismissal power under section 15 (8), which has not seemingly been previously directly considered by either the Supreme Court or this Court.
19. It would be overreaching for me to make any directions relating legal representation on an ex parte application. However, it is to be hoped that the Appellant can at the very least obtain advice from the Legal Aid Committee on the merits of his appeal. This could obviously best be advanced by independent counsel because it revolves around issues of law rather than facts. And litigants-in-person almost invariably find it impossible to effectively advance legal arguments in an objective and unemotional manner.

Order 2/32(3)

20. Order 2/32 deals with filing fees. Paragraph (3) confers on this Court a broad jurisdiction in the following terms:

“(3) The Supreme Court or the Court may, on account of the poverty of any party or for other sufficient reason dispense, if it sees fit, with payment of any fees, if the circumstances of the case require:

Provided that if such party succeeds in any appeal which results in an order for payment to him of any costs the Court may order that such fees shall be a first charge on any moneys recovered or to be recovered under such order.”

21. The need to consider this rule does not arise because of the view I have taken on the construction of Order 2/33. It suffices to note that it seems entirely anomalous that an unfettered discretion to waive fees is conferred by this rule 32, and a fettered discretion is conferred in relation to both fees and deposit and security by rule 33.

Conclusion

22. The Appellant's application for a waiver of the usual requirements as to fees, deposit and security is granted. I apologize for the delay in dealing with a matter which should ideally have been dealt with in a matter of weeks rather than months. However, in an attempt to mitigate the impact of the delay, this matter far more fully than might otherwise have been the case.
23. This decision is, in accordance with Order 2/38(2), subject to review by the full Court on the application of "*any person aggrieved*", most obviously the Respondent.