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Summary of Judgment

**Pang Chui Ping (“Applicant”) v Registrar of the High Court (Respondent)  
 (“Registrar”) & Director of Legal Aid (Interested Party) (“Director”)  
 CACV 370/2024, [2025] HKCA 372**

**Decision** : **Appeal allowed with CFI’s order of mandamus set aside**  
**Date of Hearing** : **20 March 2025**  
**Date of Judgment** : **17 June 2025**

**Background**

1. This is the Director’s appeal before the Court of Appeal (“**CA**”) against Coleman J’s Judgment in the Court of First Instance (“**CFI**”) dated 16 August 2024 in which the CFI granted, *inter alia*:
  - (1) an order of *certiorari* to bring up and quash the decision of Master D. To (“**Master To**”) dated 28 July 2022 dismissing the Applicant’s legal aid appeal (“**Master To’s Decision**”); and
  - (2) an order of *mandamus* directing the Registrar to direct the issue of a legal aid certificate to the Applicant in the underlying proceedings in relation to which the Applicant made the legal aid application (“**Mandamus**”).
2. The present matter arises from the Applicant’s legal aid application for her intended action to establish her rights under a purported agreement with her ex-husband regarding their matrimonial home (“**Agreement**”), and, incidentally, to establish her son’s rights under the trust created by the Agreement.
3. The legal aid application was refused by the Director. The Applicant then appealed to the Registrar against such refusal. In the appeal, the Director relied on the ground under s.10(3)(c) of the Legal Aid Ordinance (“**LAO**”) (Cap. 91) that it was unreasonable to grant legal aid in the present circumstances (“**Unreasonableness Ground**”). The Director considered that it was unreasonable because the sole purpose of the Applicant’s intended action was to obtain benefit for the Applicant’s son (whose financial resources exceeded the statutory limit) (“**Sole Benefit Ground**”). Subsequently, the legal aid appeal was dismissed by Master To for 3 reasons (“**3 Reasons**”), which were different from the Director’s reasons for refusal.



4. The Applicant sought, by this judicial review (“JR”), to challenge Master To’s Decision on, *inter alia*, the ground that Master To fell into legal error on all 3 Reasons. The Director conceded that Master To had erred in law regarding the 3 Reasons (“Errors”). The Applicant however refused to agree to an order that the matter be remitted to another Master for fresh determination, and insisted on seeking the *Mandamus*.
5. The remaining issue for the CFI was thus whether a *Mandamus* ought to be granted. The CFI decided in the affirmative on this issue after finding, *inter alia*, that had Master To not made the Errors, she in reality would have had only one choice legally open to her, i.e. granting legal aid.

### **Grounds of Appeal**

6. In this appeal, the Director contended that the CFI erred in granting the *Mandamus* because:-
  - (1) The CFI erred in finding that Master To had implicitly rejected the reason(s) advanced by the Director (“Implicit Rejection Finding”) (i.e. **Ground 1**) (§32(1)).
  - (2) Even if (contrary to Ground 1) the CFI had been correct, the CFI should have remitted the matter to a different Master for fresh consideration given that Master To had not given any reason(s) for rejecting the Director’s reason for refusal (i.e. **Ground 2**) (§32(2)).
7. On the other hand, the Applicant, by way of a Respondent’s Notice (“RN”), contended that the *Mandamus* should be upheld because, among other things, the only ground relied upon by the Director in refusing legal aid (i.e. Sole Benefit Ground) was in any event without merit (§33).

### **Department of Justice’s Summary of the Court’s rulings**

(Full text of the CA’s judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=169690&QS=%2B%7C%28CACV%2C370%2F2024%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=169690&QS=%2B%7C%28CACV%2C370%2F2024%29&TP=JU))

8. The CA allowed the appeal on Ground 1, refused to allow the Director to rely on Ground 2, and dismissed the RN for the reasons below.



## **Ground 1**

9. Under s.10(3) of the LAO, legal aid can be refused on two different bases, namely, (i) mandatory basis by reference to the “merits” test and (ii) discretionary basis by reference to 7 statutory grounds under ss.10(3)(a) to (g), including the Unreasonableness Ground (§34).
10. Upon examining the reasoning of Master To’s Decision, the CA held that Master To only decided whether legal aid should be refused on the mandatory, but not discretionary, basis. The 3 Reasons relied on by Master To, which all related to merits, were not logically or inherently inconsistent with the Director’s reason for refusing legal aid based on the Unreasonableness Ground. The CFI’s Implicit Rejection Finding was thus unsound (§§40 & 43).
11. Further, the CA reiterated that, once the Court concludes that the Master erred in law in dismissing the legal aid appeal, such dismissal decision ought to be quashed with the matter remitted for fresh consideration, unless the Court is satisfied that no reasonable tribunal, properly directed on the facts and law, could have refused the grant of legal aid to the Applicant. The question of deciding whether there was any implicit rejection of the Director’s reason by Master To was off-focus; and it was not a fruitful inquiry to ask whether legal aid would have been granted but for the Errors (§44).
12. An order of *Mandamus* should only be granted in those rare cases where the public law court is able to conclude that only one result was legally open to the body in question (§45). Whether it is unreasonable that the Applicant should be granted legal aid in the particular circumstances of the present case is a matter which ought to be assessed by the primary decision-maker, not the JR court. Even if it is ultimately determined that legal aid ought to be granted to the Applicant, there could be issues as to the scope of the aid that should properly be granted, which matters should generally be decided by the primary decision-maker but not the JR Courts (§46). Ground 1 was thus made out.

## **Ground 2**

13. The CA held that Ground 2 did not arise for consideration because it was predicated on the assumption that the Implicit Rejection Finding was correct. In any event, this amounted to a new point not raised below and therefore Ground 2 was disallowed (§§48, 49).



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**RN**

14. The CA held that the Applicant's arguments of attacking the Sole Benefit Ground only went to the merits, but not the purpose of the intended action, where the latter is a matter for assessment by the primary decision-maker. The Sole Benefit Ground, which is also related to the Unreasonableness Ground, ought properly to be assessed by the Master (but not the JR Court) (§§50-51).

***Remittal and its Scope***

15. By reason of the above rulings, the CA set aside the *Mandamus* and remitted the matter to another Master for fresh consideration. When deciding on the remittal, the CA also considered whether a JR Court had jurisdiction and ought to give any direction on the remittal scope. While the CA unanimously answered this question in the affirmative, it also points out that:

- (1) the Court's jurisdiction in JR is supervisory and that it should be cautious not to usurp the function of the decision-maker nor fetter the exercise of the decision-maker's duty and power (§2);
- (2) in fashioning the remedy upon granting JR, as in JR proceedings generally, the Court is exercising a secondary, supervisory jurisdiction to ensure due observance of the law, and the Court should avoid any semblance of it assuming the function assigned by the legislature to the decision-maker (§§6, 54); and
- (3) any Court's directions or rulings made for the purpose of a remitter shall only be based on requirements of the law, and the Court shall refrain from setting the limits on remittal's scope unless it would be wrong in law for the Master to go beyond those limits (§§6, 8).

16. Given the unusual procedural history (i.e. substantial delay involved and the Director's repeated shifting of refusal grounds) and in the interests of justice, the CA directed that the remittal shall be confined to the question on the Unreasonableness Ground (§§31, 55).

**CA's Disposition**

17. The CA unanimously (i) allowed the appeal, (ii) set aside the *Mandamus*, (iii)



remitted the legal aid appeal before another Master for fresh determination limited to the issue concerning the Unreasonableness Ground, (iv) directed that priority be given for an early fixing of the appeal, and (v) ordered the Applicant to pay half of the Director's costs on appeal on a *nisi* basis. (§§58-61)

**Civil Division**

**Department of Justice**

**June 2025**