



## Summary of Judicial Decision

**Julita F. Raza (“Applicant”) v Director of Immigration (“Director”)**

**HCAL 101/2003**

**Decision:** The Director’s application to dismiss the Applicant’s application for judicial review (“JR”) for want of prosecution and for lack of utility allowed – costs of the proceedings be to the Director

**Date of Hearing:** 12 January 2022

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### Background

1. The Applicant was a foreign domestic helper (“**FDH**”), and she challenged the Director’s refusal to verify her eligibility for a permanent identity card. In gist, the Applicant challenged the constitutionality of s.2(4)(a)(vi) of the Immigration Ordinance (Cap. 115) which prevents FDHs from being treated as ordinarily resident in Hong Kong, and she contended that the Director’s factual finding that she had not taken Hong Kong as her place of permanent residence was *Wednesbury* unreasonable. JR leave was granted on 26.9.2003.
2. A hearing was held on 17.5.2004 before Hartmann J (as he then was) for setting aside the JR leave. Hartmann J adjourned the JR *sine die* with liberty to restore to permit the Applicant to lodge an appeal to the Registration of Persons Tribunal (“**ROPT**”). Costs of that hearing was reserved.
3. On 6.1.2006, the ROPT dismissed the Applicant’s appeal. According to the records kept by the Immigration Department, the Applicant departed Hong Kong on 30.3.2006, and ceased to reside in Hong Kong. She entered Hong Kong as a short-stay visitor on 11 subsequent occasions. She did not apply to restore or withdraw her JR.
4. By summons dated 13.12.2021, the Director applied to the Court to dismiss the Applicant’s JR for want of prosecution and for lack of utility. The Court heard the application on 12.1.2022 and dismissed the JR with costs to the Director.



### Issues in dispute

5. **Issue 1:** Whether there has been inordinate and inexcusable delay amounting to abuse of process of the Court.

**Issue 2:** Whether it is just in the circumstances of this case to dismiss the proceedings.

### Department of Justice's Summary of the Court's Rulings

(Full text of the Decision at:

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=141681&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=141681&currpage=T))

6. The Court summarised the principles for dismissing an action for want or prosecution at §§14-15 of the Decision. The power of the Court to dismiss an action for want of prosecution is discretionary, and is derived from the Court's inherent jurisdiction. The inherent jurisdiction exists to avoid injustice, prevent abuse, preserve the dignity of the Court or to facilitate the administration of justice. The ultimate question is whether or not, in the circumstances of the particular case, it is just to strike out the proceedings. And the following principles are highlighted by the Court:

- (1) striking out is a remedy of last resort, appropriate only when it is plain and obvious to do so;
- (2) abuse of process of the court is the foundation for the exercise of the jurisdiction to strike out for the delay;
- (3) abuse can take many forms;
- (4) mere delay is not sufficient to justify an order to strike out, and delay amounting to abuse should be both inordinate and inexcusable;
- (5) on the other hand, simply because the delay is both inordinate and inexcusable is not enough to justify a striking out order, because there also has to be the element of abuse;
- (6) where abuse is clearly demonstrated, proceedings can be struck out even where prejudice to the defendant cannot be shown;
- (7) however, in the majority of applications to strike out for delay, the aspect of prejudice to the defendant will often be extremely relevant to the overall justice of the case;
- (8) the conduct of the parties may be relevant both to the critical question of abuse as well as to the overall justice of the case; and
- (9) when considering applications to strike out for delay, the court will look to the position of the parties themselves but will also have regard to the wider considerations of the underlying objectives found in RHC Order 1A rule 1.



7. On the facts of this JR, the Court accepted that (i) the Applicant clearly has no continuing intention to prosecute the JR (§17), (ii) the delay of almost 16 years is both inordinate and inexcusable (§18), and (iii) because of the lack of utility of the JR as the constitutional challenge has been finally and conclusively determined in favour of the Director by the Court of Final Appeal in *Vallejos v Commissioner of Registration* (2013) 16 HKCFAR 45, the JR can be seen to be an abuse, and on that basis, the Court does not consider it needs additionally to find prejudice to the Director for the dismissal of the JR (§§18-20).

**Civil Division**

**Department of Justice**

**14 January 2022**