CAUSE ATT. NO. 64 OF 2020 (FOR ADMISSION IN CAUSE NO. 26 OF 2014)

IN THE MATTER OF THE LEGAL PRACTITIONERS LAW (2015 REVISION) ("THE LAW").

IN THE MATTER OF AN APPLICATION FOR LIMITED ADMISSION OF ISSAC ELLIS JACOB AS AN ATTORNEY-AT-LAW IN THE GRAND COURT OF THE CAYMAN ISLANDS, CIVIL DIVISION, CAUSE NO. 26 OF 2014.

Representation: Mr Graham Hampson and Ms Sulekha Tummala of Hampson and Company for the Applicant (all appearing by video-link).

RULING

Limited Admission – Queen's Counsel or "the equivalent" – policy of section 4 of the Legal Practitioners Law (2015 Revision)

1. By this application Mr Isaac Ellis Jacob seeks limited admission to practice as an attorney-at-law to appear, on the instructions of Hampson and Company, in the matter of *Anette Diane Eden v Patrice Leanne Frederick*, in Cause No. 26 of 2014 in the Civil Division of this Court.

2. The necessary work permit has been obtained to allow Mr Jacob to appear but the requirements and policies of section 4 of the Law must nonetheless be satisfied.

3. Those requirements and policies are explained by Practice Direction No 4 of 2012 and by the case law. See *In the Matter of Certain Applications for Limited Admission as Attorney-at-law* 2009 CILR 41 and *In the Matter of Various Applications for the Grant of Limited Admission as an Attorney-at-law of the Cayman Islands* 2015(2) CILR 339.

4. For present purposes, as explained in the latter reported case at [5], the rule is that the limited admission of junior counsel or solicitors from overseas to appear in particular

matters will not be granted save in unusual and special circumstances. The burden of showing that the requisite circumstances exist rests upon the party who brings the application on behalf of the applicant. The rule does not however extend to Queen's Counsel or their equivalent as it is recognized that their expertise and experience will continue to be required for the types of complex and difficult cases which regularly come before the Cayman Islands Courts.

5. I am entirely satisfied that this application on behalf of Mr Jacobs a very senior and eminently qualified barrister meets the requirements of the test. In particular, I have in mind here paragraphs 6 (d) and (e) of Practice Direction No 4 of 2012 which require the attorney making the application in an affidavit to show:

> "*(d) unless the Judge hearing the Application is already very familiar with the specified suit or matter concerned, a sufficiently detailed summary thereof to enable the Judge to exercise his discretion in all the circumstances as to whether or not to admit the Applicant for the purposes of appearing, acting or advising in that specified suit or matter*;
>
> *(e) if the Applicant is not Leading Counsel [ie: Queen's Counsel] or the equivalent, sufficient explanation as to why it is necessary and appropriate for the Applicant to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter concerned."*

6. While on the basis of his seniority and experience Mr Jacobs may well be considered "the equivalent" of Queen's Counsel (as I think is amply demonstrated by the Affidavit of Sulekha Tummala as excerpted below), I am satisfied that the "sufficient explanation" required by paragraph 6(e) is also provided by her affidavit:

> "5.
>
> *I now set out the following matters pursuant to the requirements in paragraph 6 (d) and (e) of Practice Direction No. 4 of 2012.*
>
> *(1) The issues to be argued in this matter are very complex, involving an argument as to the suggested implied repeal of a limitation*

provision in the Vehicle Insurance (Third Party Risks) Law by the later introduction of the Limitation Law, including whether regard may be had to speeches recorded in Hansard and the effect of a judgment (to the contrary effect for which the Defendant is here contending) by McMillan J. on the same point delivered on January 28, 2020 in an action entitled Bennett v Diaz, and whether an agreement to extend a limitation period operates to extinguish that limitation.

(2) The matter is of general public importance; and

(3) the Defendant requires Mr. Jacob's expertise and experience accordingly.

I deal briefly with each of these three points in the following paragraphs of this affidavit. Elaboration in each respect can be provided by the attorney on the hearing of this application.

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(1) The principal issue pleaded by the Plaintiff in the Re-Amended Reply is whether s.17 of the Motor Vehicle Insurance (Third Party Risks) Law which sets a strict 3 year limitation period and which was passed by the Legislature on July 18, 1990 was repealed implicitly by the Limitation Law 1991 passed on August 15, 1991. In this respect there will be argument on the effect of the judgment in Bennett v Diaz by a puisne judge of the same level. Inter alia the present Defendant will be contending that the judgment was per incuriam as Mr Jacob has pointed out, three statutes of critical importance passed on March 8, 1991, l6th December 2003 and most importantly, 21" December 2011 were never cited to the judge by counsel appearing in that case including leading local counsel appearing for the Plaintiff. Following advice from Mr Jacob (privilege in respect of which is not waived) the Defendant will (inter alia) also be arguing (a) that regard should not be had to Hansard for the purpose of construing the relevant legislation (b) the reasoning of McMillan J. was flawed in a number of respects and did not properly take into account the principles of implied repeal and the effect of a Court of Appeal judgment in Cruz Martinez v Cupidon. There is a further point raised by the Plaintiff also in the Re-Amend Reply, namely whether an agreement to extend the limitation period operates to extinguish that limitation period. Accordingly the matter is highly complicated, is listed for hearing over the course of four days, and requires counsel of the greatest experience and ability - which requirement is amply fulfilled by Mr Jacob. [original emphasis]

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(2) The matter is of general public importance and of especial importance to the motor vehicle insurance industry in the Cayman Islands. Section 17 of the Vehicle Insurance (Third Party Risks) Law imposing a strict 3 year time limit is a provision clearly for the benefit of motor insurers and one on which they have relied since passage of the section nearly 30 years ago. The prompt bringing of an action within 3 years of a motor accident is of great importance to insurers in their underwriting and the idea that the looser discretionary limits prescribed by the Limitation Law might apply is of great concern to all motor vehicle insurers in the Islands. Clearly it would have an effect upon premiums. The Defendant's insurers are Saxon Motor and General Insurance Company Ltd (Saxon) who also instruct Hampson and Company and Mr Jacob in this matter."

And, as to the Mr Jacob's experience and expertise:

"(4) I refer to Mr Jacob' curriculum vitae exhibited as Exhibit "ST-2". He is of the highest ability and has 57 years' experience in the law - experience which (save perhaps for Mr Ramon Alberga QC, now sadly retired) is unmatched in the Cayman Islands. He has been regularly instructed by Hampson and Company for 10 years in matters relating to Cayman Islands law and is also instructed by other Cayman Island attorneys. He accordingly has deep familiarity with and understanding of Cayman Islands law.

Mr Jacob has been instructed and appeared frequently in the Privy Council and the Court of Appeal in England and in Gibraltar. Indeed, he was counsel instructed by Hampson & Co in Crawford Adjusters v Sagicor in the Court of Appeal in the Cayman Islands in November 2011 and on successful appeal to the Privy Council in 2013 (reported at [2013] UK.PC 17, and [2013] 2 CILR 135) where Mr Jacob's arguments were accepted and the law of civil malicious prosecution (which had remained the same since 1696) was changed. More recently Mr Jacob succeeded in an appeal to the Privy Council from Gibraltar in Primesight [2014] AC 436, and he is presently instructed on a pending appeal which raises questions of interpretation of the Gibraltar Constitution.

Mr Jacob was first instructed in the within matter of Andrade v. Frederick matter by our firm in 2015 and has advised on no fewer than five occasions in this matter since. He has as a result a detailed knowledge of the issues of law and facts in the case. At this stage to instruct other counsel to advise and act would involve considerable expense in the case.

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I am aware that the Plaintiff in Andrade v, Frederick has instructed a London silk, said at paragraph 51 of the Plaintiff's Second Affidavit (which affidavit was withdrawn with leave by Order of 3 October 2017) to be Andrew Ritchie QC of 9 Gough Square. That both parties are to be represented by London counsel, was referenced most recently at the CMC before McMillan J. on 24 March 2020, it having been earlier recorded by Consent Order of 6 December 2018 that both parties had leave to have their "respective London counsel" applications for admission and argument presented by video-link. Where the Plaintiff is represented by leading London counsel I reasonably believe that "equality of arms" suggests that the Defendant in this case be represented by very senior London counsel of the insurer, Saxon's, choice.

Mr Jacob has advised additionally in many matters where Saxon have been the insurers and the company has great confidence in him and his abilities, and he is their counsel of choice. Although Mr Jacob has never taken silk he is clearly the equivalent as his curriculum vitae and a letter from Lord Denning dated 24 December I990 exhibited to this my affidavit clearly shows. I understand Mr Jacob has many similar letters from other Law Lords and the Court of Appeal in England. He is a Fellow of the Chartered Institute of Arbitrators, Asst. Parliamentary Boundary Commissioner, and was, until reaching the statutory retirement age, a Recorder of the Crown Court."

7. I examined the documents exhibited to Ms Tummala's affidavit which, among other things, evidence the extensive and impressive list of cases in which Mr Jacobs has appeared as leading counsel before the highest Courts of England and Wales as well as before the Judicial Committee of the Privy Council, which is the final appellate Court of these Islands. But even in addition to that, there is exhibited a copy of the handwritten letter from Lord Denning to which reference is made by Ms Tummala. It is not every day that one sees such a remarkable personal endorsement of counsel's ability by so eminent a judge. The letter bears repetition here as it testifies to Mr Jacob's eminence as a barrister [from the typed version]:

"*24 Dec 1990*

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Dear Isaac Jacob,

Yes indeed, I remember you well in your many cases before us in the Court of Appeal and I do think you are well fitted for Silk. I have always appreciated the case and skill in your presentation of your arguments – and your integrity and ability are of the highest.

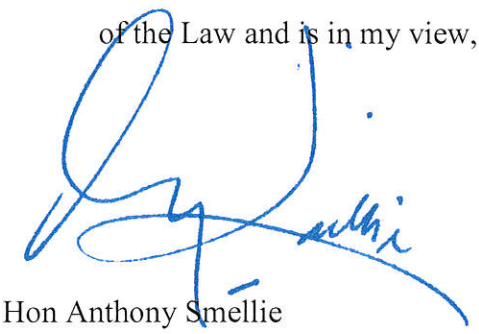
I am very sorry that you have been disappointed in your applications for silk – I am writing a line to the Lord Chancellor to tell him that you are i(n) my view, of the first quality - and well fitted for silk.

Yours ever.

Denning"

8. In response to a question from me, Mr Jacob explained that the referenced letter to the Lord Chancellor was indeed written by Lord Denning but for other reasons not to be recorded here, the die seems to have been cast against him. Nonetheless, it is fitting to acknowledge that not only the breadth of his experience of which Lord Denning wrote but also the remarkable and extensive nature of his contributions as leading counsel since then , have come to vindicate Lord Denning's views of him.

9. For all the foregoing reasons, his application for limited admission meets the requirements of the Law and is in my view, very deserving. It is therefore granted.



Hon Anthony Smellie
Chief Justice

[Date of hearing 28 July 2020]

[Written reasons released on 13 August 2020]