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**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR DECISION**

MOTION NO COA2022MT00017

APPLICATION NO COA2022APP00159

BETWEEN	ANDREW HAMILTON	1ST APPLICANT
AND	JANET RAMSAY	2ND APPLICANT
AND	PAULETTE HIGGINS	3RD APPLICANT
AND	THE ASSETS RECOVERY AGENCY	RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop JA, the Hon Miss Justice Straw JA, and the Hon Mr Justice Brown JA on 17 and 18 April 2023, with Ian Wilkinson KC and Lenroy Stewart instructed by Wilkinson Law for the applicants, and Mrs Caroline Hay KC and Zurie Johnson instructed by Caroline P Hay Attorneys-at-Law for the respondent.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by the Hon Mrs Justice McDonald-Bishop JA, is as follows:

[1] The applicants, Andrew Hamilton, Janet Ramsay and Paulette Higgins, have sought to convince this court that it ought to grant them conditional leave to appeal to His Majesty in Council from the decision of this court made on 11 November 2022 refusing their application for leave to appeal against the decision of Jackson-Haisley J delivered on 8 July 2022. The court also refused the applicant's application for a stay of execution of the judgment of Jackson-Haisley J.

[2] The respondent, through its counsel, has raised a preliminary question of law which, if determined in the respondent's favour, will be determinative of this motion. That preliminary question is whether the court has jurisdiction to grant conditional leave to appeal to His Majesty in Council from a decision of this court refusing leave to appeal.

[3] Counsel for the respondent, speaking through Mr Johnson, argued that the court does not have the jurisdiction to grant conditional leave to the applicant to appeal to His Majesty in Council having regard to the decision and pronouncements of this court in **Benbecula Limited and Malcolm McDonald v Palm Beach Runaway Bay Limited** [2022] JMCA App 37 ('**Benbecula**') endorsing and applying the applicable principles enunciated in **Lane v Esdaile** [1891] AC 210 and **Sarfraz v Disclosure and Barring Service** [2015] EWCA Civ 544. At base, these cases have established and or reinforced, as a core principle, that in the absence of express statutory language to the contrary, a provision giving a court the power to grant or refuse permission to appeal should be construed as not extending to an appeal against a refusal of permission to appeal.

[4] In **Benbecula**, the applicant for conditional leave to appeal to His Majesty in Council had failed to obtain permission to appeal from the decision of the Supreme Court concerning the grant of summary judgment. After consideration of the **Lane v Esdaile** principle, section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act ('JAJA'), and section 110 of the Constitution, this court concluded that: "there being no appeal to this court from the decision of [the judge below], there was also no decision of this court on an appeal from the Supreme Court, which would trigger the provisions of section 110(2)(a) of the Constitution" and that "[c]onsequently, there could have been no question arising from the decision of this court, which is amenable to a further appeal through the gateway of the Constitution" (see paras. [29] and [30]). Relying on this dicta, the respondent's position is that the motion for conditional leave to appeal should be refused.

[5] In the face of the incontrovertible principles of law the respondent has relied on, Mr Wilkinson KC, speaking for the applicant, argued that the instant case is

distinguishable from the case of **Benbecula** for several reasons. King's Counsel's contention, primarily, is that **Benbecula** ought not to be "robotically" applied to all cases involving a refusal of this court to grant permission to appeal. He maintained that there are key facts in the instant case, which would remove it from a strict application of the decision in **Benbecula**. The main fact, according to King's Counsel, is that the decision of the court not to grant the applicants' leave to appeal has resulted in the final determination of the substantive proceedings. Additionally, he urged the court to exercise its discretion and grant the applicant's motion for conditional leave to appeal to His Majesty in Council, bearing in mind the principles of fairness and justice, particularly if it is felt that the applicants might have been treated unfairly throughout the judicial process. King's Counsel also directed the court's attention to parallel proceedings involving the parties in which, he said, there are related questions of law for determination by this court that could, ultimately, have an impact on the court's decision, in this case, refusing permission to appeal the decision of the Supreme Court. For those reasons, it would be prudent and in the interests of justice and fairness for this court to exercise its discretion to allow for the decision of this court to be reviewed by His Majesty in Council by way of an exception to the general rule applied in **Benbecula**.

[6] King's Counsel is of the view that for all the foregoing reasons, among others not expressly stated for present purposes, but which have been considered by the court, section 110(2) of the Constitution does not operate to bar this motion for leave to appeal as the circumstances are distinguishable from those which would attract the principles from **Lane v Esdaile** and **Benbecula**. He cited several cases in support of this submission such as **Ex parte Pinochet Ugarte (No 2)** [2000] 1 AC 119, **North Range Shipping Ltd v Seatrans Shipping Corporation** [2002] EWCA Civ 405, **CGU International Insurance Plc and ors v AstraZeneca Insurance Co Ltd** [2006] EWCA Civ 1340, and **Lux Locations Ltd v Yida Zhang** [2023] UKPC 3.

[7] Despite the customarily spirited and thought-provoking submissions of Mr Wilkinson on behalf of the applicants, we find no reason to treat the instant case any differently from **Benbecula**, as there are no pivotal distinguishing features between the

two cases. The instant case, like **Benbecula**, involves the refusal of this court to grant permission to appeal from an interlocutory judgment or order of the Supreme Court. No appeal lies to this court from an interlocutory decision of the Supreme Court in civil proceedings in the absence of permission to appeal either from this court or the court below (see section 11(1)(f) of the JAJA). Therefore, the right of this court to entertain the appeal from the decision of the Supreme Court is restricted by statute and so there is no legal basis for the exercise of the court's discretion to permit an appeal to His Majesty in Council. Accordingly, the court sees no basis to disapply the principles of law the respondent's counsel has deployed to mount the preliminary challenge to the applicants' motion for conditional leave to bring an appeal before the Privy Council.

[8] Our conclusion, therefore, would accord with the submissions of Mr Johnson on behalf of the respondent that there is no decision of the Supreme Court "on appeal" to this court, which would trigger the provisions of section 110(2) of the Constitution for conditional leave to be granted to the applicant to appeal to His Majesty in Council. Consequently, the respondent must succeed on the preliminary question of law raised through its counsel.

[9] The resolution of this preliminary question against the applicants is determinative of the motion. Therefore, there is no need to consider whether the proposed questions the applicants wish to submit to His Majesty in Council would have satisfied the requirements of section 110(2)(a) of the Constitution.

[10] We would hold that the notice of motion for conditional leave to appeal to His Majesty in Council from the decision of this court, made on 11 November 2022, refusing the applicants' application for permission to appeal against the judgment of Jackson-Haisley J, should be refused. Consequently, the applicants' request for a stay of execution pending the appeal to His Majesty in Council would have no basis upon which it could be granted, and as such should, likewise, be refused.

[11] Accordingly, the orders of the court are as follows:

1. The notice of motion for conditional leave to appeal to His Majesty in Council from the decision of this court, made on 11 November 2022, and for a stay of execution, filed on 1 December 2022, is refused.
2. Costs of the motion to the respondent to be agreed or taxed.