



# IN THE COURT OF APPEAL, CIVIL DIVISION

REF:



National Highways Limited –v– (1) Persons Unknown  
(2) Mr Alexander Rodger and 132 Others  
CA-2022-001066

## ORDER made by the Rt. Hon. Lady Justice Whipple

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

### ORDER AMENDED UNDER THE SLIP RULE UNDERLINED IN RED THIS 31<sup>ST</sup> OCTOBER 2022

REF: CA-2022-001066 & CA-2022-001105 REF:CA-2022-001066

**Decision: Permission to appeal granted.**

#### Reasons

1. Permission is sought on the single ground that the judge erred in not granting a final injunction against all defendants, named and unnamed. It is said that the judge imported a further requirement on the Appellant to show that all defendants had already committed the torts in question.
2. I grant permission on the basis that there is a compelling reason for this appeal to be heard. The appeal raises important issues about the Court's approach to final injunctions in the context of protests on public roads and in public spaces.
3. The legal issue raised is arguable, but I have not formed a view on the merits. I observe this: at paragraphs [24]-[36], the judge refused summary judgment for the 109 because (as I read it) the evidence was insufficient to show that those 109 had "no real prospect" of defending themselves at a notional trial of the pleaded allegations of trespass, public nuisance and private nuisance, applying the test in CPR 24.2. He reached a different conclusion in relation to the 24 because of the stronger evidence arising from their contempt proceedings. The Appellant says this was an error of law because the judge, in effect, imposed a further condition for a final anticipatory injunction, namely that past commission of torts be proven. I am not so sure. I think the judge might just have been making a point about the evidence in the context of a summary judgment application. At the hearing, the Court will doubtless wish to examine the evidential requirements that underpin CPR 24.2 and understand how CPR 24.2 is said to work alongside the test for anticipatory injunctions.

#### Information for or directions to the parties

**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? No

#### Pilot categories:

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• All cases involving a litigant in person (other than immigration and family appeals)</li> <li>• Personal injury and clinical negligence cases;</li> <li>• All other professional negligence cases;</li> <li>• Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;</li> </ul> | <ul style="list-style-type: none"> <li>• Boundary disputes;</li> <li>• Inheritance disputes.</li> <li>• EAT Appeals</li> <li>• Residential landlord and tenant appeals</li> </ul> |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot?

Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation?

Yes/No (delete as appropriate)

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment) 1 day
- b) any expedition Some expedition required, to be heard this term or early next term if possible.

Signed:

Date: Lady Justice Whipple,  
27.10.22  
BY THE COURT

**Notes**

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: