

Case Summary for:
HOMMULLA PATHIRANNAHALAGE KUMARA DOUGLUS v SECRETARY FOR JUSTICE FOR AND ON BEHALF OF THE (1) SECRETARY FOR SECURITY (2) DIRECTOR OF IMMIGRATION¹

Court:	District Court (Hong Kong)
Judge:	His Honour Judge Andrew Li
Applicant (and Counsel):	Hommulla Pathirannahalage Kumara Douglus (Ms Cecilia Wong of Yip & Liu)
Respondents (and Counsel):	(1) Secretary for Security (2) Director of Immigration (Mr Lewis Law, instructed by Department of Justice)
Date heard:	11 July 2018
Date promulgated:	21 September 2018
Full text:	https://www.hklii.hk/eng/hk/cases/hkdc/2018/1179.html
ABSTRACT: The Applicant made a claim against the defendant for damages arising from the period of detention. The statement of claim was filed out of time without leave of the court, and the defendant applied to strike off the claim. The court held that there were good and plausible reasons to explain the delay and granted the Applicant an extension to file and serve the statement of claim out of time.	
Key words:	Judicial review; habeas corpus; unlawful detention

The Justice Centre is grateful for the assistance rendered by Morrison & Foerster LLP on this case summary.

¹ [2018] HKCU 3294

SUMMARY:

Facts and Procedural History:

The Applicant was a Sri Lanka national who entered Hong Kong on or around 6 April 2005 and was detained in Castle Peak Bay Immigration Centre from 16 July 2006 to 25 December 2006. The Applicant was subsequently released on recognizance pending determination of his non-refoulement claims made at different times under different applicable grounds. On 9 July 2012, the Applicant made a claim against the defendant for damages arising from the period of detention. The Applicant's statement of claim was filed out of time without leave of the court. The defendant applied to strike out the claim for want of prosecution.

Issues:

Whether there were good and plausible reasons to explain the Applicant's delay in serving the statement of claim.

Judgment:

There were good and plausible reasons to explain the Applicant's delay in serving the statement of claim. The Court granted the Applicant an extension to file and serve the statement of claim out of time.

Reasons for Judgment:

Substantial arguments were made as to the Applicant's reasons for the delay in serving the statement of claim. Of relevance, the judge noted that since *Ghulam Rbani*, most applicants have settled claims for unlawful detention by way of sanctioned offers/payments and/or without prejudice negotiations without proceeding to trial. (para 36)

"[I]n or about August 2016, there were over 750 outstanding cases from asylum seekers like the plaintiff who were claiming damages for unlawful detention against the defendant, following the CFA's decision in Ghulam Rbani handed down in March 2014. So far almost all of those cases, with the exception of a handful of claimants who had decided to get rid of their lawyers and represented themselves, have been settled by way of sanctioned offers/payments and/or without prejudice negotiations without the parties going to trial. This was well known to the DoJ as they represent the defendant in all of those cases. Thus, it was not unreasonable for the plaintiff and his assigned solicitor to believe that his case would be settled by out of court negotiations also, just like the rest of the other cases."

Legal Provision considered:

1. Order 18 rule 1 of the Rules of the District Court
<https://www.hklii.hk/eng/hk/legis/reg/336H/>

Key Case cited:

1. *Ghulam Rbani v Secretary for Justice for and on behalf of the Director of Immigration* (2014) 17 HKCFAR 138 (at paragraph 36) (see “Reasons for Judgment” above)
<https://www.hklii.hk/eng/hk/cases/hkcfa/2014/21.html>