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Law

Clash between Saudi royal protocols and civil procedure rules

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Daniel Lightman: Supreme Court decided that there were grounds to be sceptical as to the existence of the claimed Saudi royal protocol

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This week the Supreme Court by four to one dismissed a Saudi Arabian prince's appeal against a judgment that had been entered against him for more than US$7 million in novel circumstances.

The case involved a dispute between shareholders in a telecoms company; a number of key emails and other documents were alleged to have been forged. All parties were ordered personally to make witness statements giving details of their email addresses and electronic devices.

However HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud, a defendant to the claim brought by Apex Global Management, claimed that a protocol binding on members of the Saudi royal family prevented him from signing witness statements. Instead, witness statements were made on his behalf by his personal adviser.

After failing to comply with an "unless" order requiring him to make the statements personally, the prince found himself debarred from defending the claims — and judgment entered against him for US$5.9 million plus interest.

In dismissing his appeal, the Supreme Court decided that the lower courts' decisions "cannot be faulted" and that there were good grounds to be sceptical as to the existence and the applicability of the claimed Saudi royal protocol.

This appeal raised a hot topic in civil litigation in the wake of the recent Jackson reforms: where a party who has failed to comply with an "unless" order applies for relief from sanctions, should the court be inclined to leniency where that party has a strong case on the ultimate merits of the proceedings?

Lord Neuberger, president of the Supreme Court, stated that the underlying merits are generally irrelevant when it comes to case management issues — although there may be an exception where a party has a case whose strength would entitle him to summary judgment.

It is hard, Lord Neuberger explained, to identify quite how a court, when giving directions or imposing a sanction, could satisfactorily take into account the ultimate prospects of success in a principled way. It would also be thoroughly undesirable if, every time the court was considering the imposition or enforcement of a sanction, it could be faced with the exercise of assessing the strength of the parties' respective cases.

That would lead to such applications costing much more and taking up much more court time than they already do. It would thus be inherently undesirable and contrary to the aim of the Woolf and Jackson reforms.

Lord Neuberger also endorsed a policy of self-restraint by the Supreme Court in the supervision of the administration of civil procedure. Such matters, he said, are primarily for the Court of Appeal to resolve. While it would be wrong in principle for the Supreme Court to refuse to entertain an appeal against a decision simply because it involved case management and the application of the CPR, just as the Court of Appeal is generally reluctant to interfere with trial judges' decisions on such matters, so should the Supreme Court be diffident about interfering with the guidance given or principles laid down by the Court of Appeal.

Daniel Lightman, a barrister at Serle Court Chambers, represented the respondents in Al Saud v Apex Global Management Ltd in the Supreme Court