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

APPLICATION NO COA2023APP00086

BETWEEN **MEKELIA GREEN** **APPLICANT**
AND **THE REAL ESTATE BOARD** **RESPONDENT**

TAKE NOTICE that this matter was heard by the Hon Mrs Justice Foster-Pusey JA, the Hon Mr Justice D Fraser JA and the Hon Mrs Justice Harris JA on 23 October 2023, with Gavin Goffe and Jovan Bowes instructed by Myers, Fletcher & Gordon for the applicant and Oshane Vacciana for the respondent. The applicant was present in court.

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

[1] This is an application for permission to appeal against the decision of Carr J ('the learned judge') made on 21 April 2023, refusing the applicant's application for leave to apply for judicial review and awarding costs to the respondent. The learned judge also refused leave to appeal her decision.

[2] Counsel for the applicant, in the proposed grounds of appeal, contends that the learned judge erred when she:

- a. failed to find that the respondent had determined that the applicant had committed the offence of engaging in the practice of real estate business;

- b. determined at the leave stage that section 14 of the Real Estate (Dealers and Developers) Act ('the Act') included a power for the respondent to impose conditions precedent to the grant of a licence to the applicant;
- c. alternatively, failed to find that section 14(2) of the Act does not permit the respondent to impose conditions precedent to the issue of a licence under section 20 of the Act when the applicant is fit and proper to be registered;
- d. considered and determined at the leave stage that the conditions imposed by the respondent were reasonable; and
- e. found that an appeal under section 22 of the Act was a suitable alternative to judicial review.

[3] Counsel for the respondent submitted that the learned judge properly exercised her discretion and that no basis exists for the exercise of her discretion to be disturbed. This is because the applicant does not have a real chance of success on appeal for a number of reasons, including that the learned judge was correct in finding that:

- (i) the Board did not make a decision that the applicant was engaged in the practice of real estate business,
- (ii) the grant of registration was subject to conditions that were rationally, reasonably and lawfully imposed; and
- (iii) the applicant had an alternative remedy by way of an appeal under section 22 of the Act.

[4] Both sides agree that this is an application for permission to appeal against an order made in the exercise of the learned judge's discretion. The rule of this court in such circumstances is well-settled: an appeal against the exercise of a

judge's discretion will generally only succeed if it can be shown that the judge erred in principle or failed to have regard to some relevant fact (**Hadmor Productions Ltd v Hamilton and Others** [1982] 1 All ER 1042; **Attorney General v MacKay** [2012] JMCA App 1).

[5] Having considered the material provided by both parties, as well as the helpful submissions of counsel, we agreed with the submissions of the respondent. And, in any event, given that the applicant has satisfied the conditions imposed by the Board, and is registered and licensed as a real estate salesperson, an appeal would be a purely academic exercise. As a result, the court came to the clear conclusion that the high threshold required for applications of this nature was not met in this case and that the application for permission to appeal should accordingly be refused, with costs to the respondent to be agreed or taxed.