



## Summary of Judgment

***IBRAHIM OMERDIC V JESSICA ANGLAND***

**[2018] VSCA 320**

**4 December 2018**

The Court of Appeal (Justices Hargrave, T Forrest and Emerton) today unanimously refused the applicant leave to appeal his conviction for solemnising a marriage where there was a reason to believe that there was a legal impediment to the marriage — namely that one of the parties, ‘Ms C’, was underage.

The applicant, then an authorised religious marriage celebrant, admitted that he was aware Ms C was underage, however claimed that he had conducted a religious blessing or ‘Nikah’ rather than the solemnisation of a marriage. The ceremony was recorded in part on a mobile phone.

The Magistrate rejected the applicant’s defence and convicted the applicant. The applicant appealed to the Trial Division on the basis that it was not reasonably open to the Magistrate on the evidence to find that: (a) the ceremony was completed; (b) the ceremony was in a form sufficient to be recognised as marriage by the applicant’s religious body; and (c) the applicant intended to perform a marriage. The trial judge dismissed the appeal, and that decision was appealed to the Court of Appeal.

The Court of Appeal held that, despite the video footage being incomplete, ‘the inference that the ceremony came to an abrupt end before it could be completed was not reasonably open’ and that it was open to the Magistrate to be satisfied to the requisite standard that the ceremony was completed.

The Court also held that there was sufficient evidence from which the Magistrate could conclude that the ceremony was sufficient to solemnise a marriage recognised by the applicant’s religious body. Moreover, the applicant’s intention to solemnise such a marriage could reasonably be inferred from the evidence, the Court holding that it was, ‘plain that the applicant intended to perform a ceremony using the text used for the solemnisation of marriages under Islamic law’.

The Court unanimously refused leave to appeal, as none of the proposed grounds had any real prospect of success.

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**NOTE:** This summary is necessarily incomplete. It is not intended as a substitute for the Court’s reasons or to be used in any later consideration of the Court’s reasons. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.