

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No CV 002 of 2013

CCJ Appeal No CV 003 of 2013

BETWEEN

MADANLALL MAHAMAD

APPLICANT

AND

S & R ABDULLA CANE FARMING INC.

RESPONDENT

Before The Honourables

**Mr Justice R Nelson
Mme Justice D Bernard
Mr Justice J Wit
Mr Justice D Hayton
Mr Justice W Anderson**

Appearances

Mr Permanand Mohanlall, Mr Roopnarine Satram and Mr C V Satram for the Applicant

Mr Sanjeev J Datadin and Ms Jamela Ali for the Respondent

JUDGMENT

of

Justices Nelson, Bernard, Wit, Hayton and Anderson

Delivered by

The Honourable Mr Justice Nelson

on the 22nd day of July 2013

[1] On November 13, 2008 Mr Madanlall Mahamad (hereinafter called “the Applicant”) began High Court Action No. 251-S of 2008 against S & R Abdulla

Cane Farming Inc. (hereinafter called “Abdulla Cane Farming”), a limited liability company. This action is referred to as “the first action.”

- [2] On April 21, 2009 Abdulla Cane Farming brought an action against the Applicant in High Court Action No. 237-C/D of 2009 (Demerara) in the Commercial Division of the High Court. This action is hereinafter referred to as “the second action.”
- [3] The first action was by way of a specially indorsed writ filed in the Bail Court of the High Court. The Applicant claimed \$8,986,000.00 for work done by the Applicant pursuant to a written contract dated October 7, 2008.
- [4] The second action was by Abdulla Cane Farming and claimed damages in a sum in excess of \$7,000,000.00 for breach of contract.
- [5] The first and the second actions were heard together by Mr Justice Rishi Persaud in the Commercial Court. On December 3, 2010 Rishi Persaud J dismissed the claim in one matter and in the other awarded special damages in the sum of \$7,000,000.00 and general damages of \$210,000. Those orders as entered were ostensibly in favour of the Applicant.
- [6] On February 2, 2011 Abdulla Cane Farming filed a summons before Rishi Persaud J under Order 26 rule 11 of the High Court Rules (“the slip rule”) to amend the orders in the first and second actions. On July 6, 2012 the learned trial judge amended his order of December 3, 2010 in the first action by dismissing the Applicant’s claim altogether with no order as to costs. In response to a similar summons for an amendment to the order made in the second action, the learned judge replaced his original order by an order that the Applicant pay Abdulla Cane Farming \$7,000,000.00 in special damages and \$250,000.00 in general damages.

- [7] On November 30, 2012 a single judge of the Court of Appeal, Roy JA granted the Applicant leave to appeal out of time against the orders of Rishi Persaud J amending the orders in the first and second actions. Pursuant to that order, the Applicant filed a Notice of Appeal dated December 4, 2012.
- [8] Abdulla Cane Farming in response applied to the Full Bench of the Court of Appeal for an order reviewing the order of Roy JA of November 30, 2012. On the hearing of that application on January 30, 2013, the Court of Appeal held that Roy JA had erred in making the order of November 30, 2012 since the Court of Appeal had no jurisdiction to entertain an appeal from an order made in chambers by Rishi Persaud J.
- [9] The Applicant now comes to this Court for special leave to appeal the order of the Court of Appeal discharging the orders of Roy JA in both the first and second actions, treating these applications for leave to appeal as the hearing of the appeals and setting aside the orders of the Court of Appeal and restoring the orders of Roy JA.

Basis of the application for special leave

- [10] Although the basis of the application under the Caribbean Court of Justice Act 2004 (“the CCJ Act”) is not clearly spelled out in the application, it is apparent that the Applicant relies on section 8 of the CCJ Act.
- [11] Section 8 provides:
- “Subject to section 7, an appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal from any civil or criminal matter.”

In *Narine v Gupraj Persaud*¹, we adverted to the fact that section 8 reserves to this Court in broad terms “an unlimited residual discretion to prevent miscarriages

¹ [2012] CCJ 8 (AJ) at [18]

of justice.” Further, the Court will provide access to it via section 8 to correct egregious errors of law. Thus, the applicant for special leave must show in the proposed grounds a good arguable case.

- [12] It is because this Court will conduct a careful scrutiny of the proposed grounds that it is important for this Court to have before it the Court of Appeal’s reasons. Regrettably, at the time of hearing the application, the reasons of the Court of Appeal were not available. Although it is not clear that section 5 of the Time Limit for Judicial Decisions Act 2009 applies to orders which do not dispose of a substantive appeal, judges should be guided at all stages by the letter and spirit of that Act, i.e. that judges should give reasons for their decisions.

The principal issue

- [13] The main issue in this matter arises out of the interpretation of section 6(2)(a)(i) of the Court of Appeal Act, Cap 3:01 which states:

“6(2) Subject as otherwise provided in this section, an appeal shall lie to the Court of Appeal in any cause or matter from any order of the Full Court or of a judge of the High Court (whether made before or after the date on which is Act comes into force) where such order is –
(a) final and is not –
(i) an order of a judge of the High Court made in chambers or in a summary proceeding ...”

- [14] Counsel for Abdulla Cane Farming submitted both in the Court of Appeal and before this Court that Roy JA erred in granting leave to appeal out of time since the orders of Rishi Persaud J made on July 6, 2012 in chambers were final orders but were made in chambers. Accordingly, there was no jurisdiction in the Court of Appeal to hear such appeals, the proper course being to appeal to the Full Court. It is common ground that the Court of Appeal upheld this submission and discharged the order of Roy JA made on November 30, 2012.

[15] Counsel for the Applicant submitted that the fact that an order amending a final order under the slip rule (Order 26 rule 11 of the High Court Rules) is made in chambers does not transform a final order as amended into an order made in chambers. There is merit in the Applicant's submission. If it did it would establish the illogical position that appeals from amended orders would lie to the Full Court, while appeals from unamended orders would lie to the Court of Appeal, yet the matter being appealed in both cases was the same matter heard by the trial judge. The effect of the orders of Rishi Persaud J on July 6, 2012 is that deletions would have to be made on the original orders and the orders pronounced on July 6, 2012 would be inserted in red on the original orders. These amended orders could only take effect from the date of their pronouncement, i.e. July 6, 2012, though they could have retrospective effect as to interest on payments due.

The second issue

[16] The second point made by counsel for the Respondent was that when Roy JA made his orders extending the time for appealing, the Applicant's applications were woefully out of time under the Court of Appeal Rules Order II rule 3. We agree with counsel for the Applicant that this submission is misconceived.

[17] Order II rule 3(1) of the Court of Appeal rules provides as follows, so far as is relevant:

“3.(1) Subject to the provisions of this rule, no appeal shall be brought after the expiration of six weeks from the date of judgment delivered or order made, against which the appeal is brought, provided that in the case of appeals ...”

Rule 3(3) states:

“(3) A judge of the Court may by order extend the time prescribed in paragraph (1) of this rule within which an appeal may be brought,

provided an application for this purpose is made within one month of the expiration of the time so prescribed.”

Rule 3(5) reads thus:

“(5) Every application for enlargement of time when made to a judge of the Court shall be made by summons, and when made to the Court shall be by motion. Every summons or notice of motion filed shall be supported by an affidavit setting forth good and substantial reasons for the application and by grounds of appeal which *prima facie* show good cause therefor.”

[18] Applying these sub-rules of Rule 3 to the facts, one finds that six weeks (as Rule 3(1) stipulates) after July 6, 2012 would expire on August 18, 2012. Thereafter, the Applicant had a grace period of one month to apply for an extension of time. The Applicant applied for an extension of time on August 29, 2012. Accordingly, Roy JA was well within his jurisdiction when he heard the applications for an extension of time since those applications were filed within the time permitted by the Court of Appeal Rules.

Conclusion

[20] In deciding whether to exercise our independent discretion to grant special leave, this Court is entitled to look at the reasons why the Court of Appeal declined to give leave to appeal. Because the Court of Appeal clearly erred and set aside the order of Roy JA, it is appropriate to grant special leave to appeal to correct an error of law and to treat the hearing of this application as the hearing of the appeal.

[21] Accordingly, the Court makes the following orders:

- (1) Pursuant to the Rule 8(2) of the CCJ Rules Civil Appeals 2 and 3 of 2013 are to be heard together.

- (2) Special leave to appeal the orders of the Court of Appeal dated January 30, 2013 is hereby granted.
- (3) The hearing of these applications is treated as the hearing of the appeals.
- (4) The orders of the Court of Appeal of January 30, 2013 are hereby set aside.
- (5) The orders of Mr Justice of Appeal Roy dated November 30, 2012 are to stand.
- (6) The Notices of Appeal filed on December 4, 2012 are to stand.
- (7) The Respondent shall pay to the Applicant the costs of these appeals both here and in the Court of Appeal.

/s/ R. F. Nelson

The Hon Mr Justice Nelson

/s/ D P Bernard

The Hon Mme Justice Bernard

/s/ J Wit

The Hon Mr Justice Wit

/s/ D Hayton

The Hon Mr Justice Hayton

/s/ Winston Anderson

The Hon Mr Justice Anderson