

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

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

**CCJ Application No AL 8 of 2012
BB Civil Appeal No 16 of 2009**

BETWEEN

CLYDE BROWN

APPLICANT

AND

**MICHELLE MOORE-GRIFFITH
ROBIN REGINALD MOORE
BASIL ROY MOORE**

RESPONDENTS

**Before The Right Honourable
And the Honourables**

**Mr Justice Byron, President
Mr Justice Nelson
Mr Justice Saunders
Mme Justice Bernard
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson**

Appearances

Mr Lalu Hanuman for the Applicant

Mr Clement E Lashley QC and Ms Honor Chase for the Respondents

**Mr Barry Gale, QC and Mr Sean Lewis for The Barbados Bar Association
(appearing *amicus curiae*)**

JUDGMENT

Of

The President, and Justices Nelson, Saunders, Bernard, Wit, Hayton and Anderson

Delivered by

The Honourable Mme Justice Bernard

on the 28th day of February 2014

JUDGMENT

- [1] This application is the latest salvo in a long, colourful and persistent series of litigation, commencing with three judgments emanating from courts in Barbados¹ and leading already to two judgments of this Court.² The Respondents had successfully claimed possession of a parcel of land against the Applicant whose claim to have acquired title by adverse possession was decisively rejected by the trial judge and by the Court of Appeal which examined and endorsed the factual findings of the judge. It also refused leave to the Applicant to appeal as of right to this Court.
- [2] The Applicant thus sought special leave directly from this Court. On 17th July 2013 at an oral hearing this Court pointed out that the Court of Appeal had erred in refusing leave to appeal but that to succeed on a special leave application it was necessary to show on the merits that there was a realistic chance of success at a substantive hearing if leave were granted. Where the trial judge and the Court of Appeal concurred in the findings of fact it was only in an exceptional case that this Court would be prepared to upset such findings. This case was far from being such a case.
- [3] This Court heard the case on the basis of the standard affidavits from either side and also two written submissions from Applicant's counsel though no application for them to be permitted had been made. Justice Nelson, presiding over the panel of three judges, expressly stated, "You can take it as read that we have read the written submissions." Special leave to appeal and leave to appeal as a poor person were refused on 17th July and detailed reasons were provided in September 2013.
- [4] On 15th September the Applicant, alleging a breach of natural justice and the rules of the CCJ, filed an application to have a differently constituted panel of CCJ Judges set aside the orders of the CCJ dated 17th July and hear the special leave application afresh. This Court then read the supporting documents and on 17th

¹ Decision of Kentish J dated 25th September 2009, Civil Appeal No 16 of 2009, decision of the Court of Appeal dated 2nd July 2012, decision of Court of Appeal dated 23rd October, 2012 refusing leave to appeal to the CCJ.

² [2013] CCJ 12 (AJ), [2013] CCJ 6 (AJ)

October ordered the Applicant to file further submissions, stating that “the Court will determine this application based on the written submissions and without oral arguments, pursuant to Rule 8.1 and Rule 9.6(c) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules”. The Applicant did not then see fit to make a reasoned application for an oral hearing.

- [5] On 2nd December a differently constituted panel of three judges presided over by the CCJ President decisively dismissed the application of 15th September 2013 in an Order that accorded with standard practice in referring to affidavits and submissions filed for the current application since September 2013 but not those filed for the purposes of any earlier hearing such as that on the 17th July. This Court agreed with the Applicant that the Court did have an inherent jurisdiction to correct procedural unfairness where there was a breach of the rules of natural justice but on examining the detailed judgment of the earlier panel found that there was clearly no such breach here.
- [6] On 30th December 2013 the Applicant applied for the 2nd December judgment to be set aside for a breach of international law, a deviation from standard judicial norms, a failure to observe the CCJ Rules, a breach of natural justice and procedural irregularity, so that the 15th September application be reinstated.
- [7] As a result, on 3rd February 2014 the Applicant was given notice that he must address the following preliminary issues: why the filing of this application should not be treated as an abuse of process and what, if any, should be the consequences if it is deemed to be such an abuse? The Barbados Bar Association was invited to appear as *amicus curiae* to assist the Court, which is most grateful for the helpful written submissions provided on behalf of that Association by Mr Sean Lewis supplemented by oral submissions of its President, Mr Barry Gale QC.
- [8] The Applicant’s counsel made wide ranging written submissions encouraging this court to emulate Nelson Mandela’s ideals and bring about social justice. The focus of the hearing, however, was on whether there had been an abuse of process or whether counsel’s actions in launching yet another attack on a final judgment

were justifiable. He alleged that the 2nd December judgment being based on the papers rather than an oral hearing amounted to breaches as set out in [6] above that justified a new application. Nevertheless, this could not be substantiated at all in the light of the CCJ Rules and the practice in many final courts of appeal. Moreover, if counsel considered that an oral hearing was so important he could have made an express application to be heard orally, when this Court had made its orders on 17th October in the absence of counsel, believing that this would save time and costs.

- [9] The Applicant's counsel was very persistent that the December panel had not read his exhibit LH5 in its entirety to see how justified he was in complaining that the July panel had not read his written submissions. On examining the December judgment it is clear that there is no basis for this. Counsel also alleged that the December panel's order in not referring to counsel's July submissions obviously showed that the panel had not performed its duty to consider those submissions, but this is totally misconceived as pointed out in [5] above. For completeness sake, we emphasise that we have closely read and considered all applications, affidavits, exhibits, submissions and orders relating to the Applicant's attempts to have his substantive appeal heard by this Court.
- [10] When the Applicant's counsel was asked by Justice Nelson whether he accepted that counsel's written submissions had been read when the judge stated, "You can take it as read that we have read the written submissions", he stated that he did not accept what the judge had said, persisting in what he had stated in his written submissions. Furthermore, when invited by other judges to withdraw this attack on the integrity of Justice Nelson, he refused to take advantage of this opportunity. He is clearly in contempt of court, but in all the circumstances of this prolonged litigation he is very fortunate that we have decided not to pursue this any further.

Decision of the Court

[11] In view of the matters detailed above, there can be no doubt that counsel's application is an abuse of process of the court designed to clutch at straws to enable him to have yet another attempt to reopen his client's case. Further, counsel's submissions were replete with outrageous suggestions and intemperate language entirely unbecoming of a legal practitioner appearing before a court.

[12] This Court thus dismisses the application, but must decide what further orders it ought to make in light of all the circumstances. In fashioning the appropriate orders the Court is guided by the tenets of proportionality as well as the overriding interests of justice and the need for public confidence in the judicial process. Despite counsel for the Applicant stating that he did not intend to take any further action in this matter, he declined to give an undertaking to this effect, even when specific enquiries were made of him. There has to be finality in this litigation when the key issues are res judicata. Accordingly, this Court orders that no further applications in these proceedings may be made by or on behalf of the Applicant without the leave of this Court. The Court further orders that counsel for the Applicant will bear personally the Respondent's costs of this application to be taxed if not agreed.

The Rt Hon Sir Dennis Byron

The Hon Mr Justice R Nelson

The Hon Mr Justice A Saunders

The Hon Mme Justice D Bernard

The Hon Mr Justice J Wit

The Hon Mr Justice D Hayton

The Hon Mr Justice W Anderson