

[2014] CCJ 9 (AJ)

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

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

**CCJ Application No. GYCR2014/001
GY Criminal Appeal No. 2 of 2014**

BETWEEN

KEVIN DHANPAT A/C KELLY

APPLICANT

AND

DET CPL HASRAT MOHAMED NO 153389

RESPONDENT

Before The Honourables

**Mr Justice R Nelson
Mr Justice A Saunders
Mr Justice J Wit
Mr Justice D Hayton
Mr Justice W Anderson**

Appearances

Mr Sanjeev J Datadin and Mr Charles S Ramson for the Applicant

Ms Jo-Ann Barlow for the Respondent

JUDGMENT

of

Justices Nelson, Saunders, Wit, Hayton and Anderson

Delivered by

The Honourable Mr Justice Hayton

on the 15th day of April 2014

Overview

- [1] The Applicant, Kevin Dhanpat also called Kelly, applied on March 18, 2014 for special leave to appeal against the majority decision of the Court of Appeal made on March 6, 2014 refusing an application for bail pending the hearing of his appeal. The Applicant had earlier been convicted and sentenced to three years' imprisonment by Magistrate Isaacs-Marcus on November 7, 2013. The March application to the Court of Appeal for bail had been made because an earlier petition for bail had been refused by Justice Insanally on January 28, 2014.
- [2] On April 10, 2014 this Court dismissed the application for special leave because the Court of Appeal had no jurisdiction to hear the bail application, so that its decision was a nullity as the Court declared to be the case. There was no "decision of the Court of Appeal" as to bail within s 8 of the Caribbean Court of Justice Act 2004 to enable the Caribbean Court of Justice to deal with the issue of bail, although the matter was properly before the Court to determine the issue of the Court of Appeal's jurisdiction. As the matter concerned the liberty of the subject, this Court ordered expedited proceedings by directing the Registrar of the Court of Appeal to fix the hearing of the appeal from the Magistrate's decision before May 31 2014. No order was made as to costs. The Court agreed to give written reasons. These are those reasons.

Reasons for dismissing the application

- [3] Roy JA, dissenting in the Court of Appeal, considered that the Court had jurisdiction to hear the bail application under s 17(2) of the Court of Appeal Act, Cap3:01, and would have granted bail. Section 11 of that Act, however, makes clear that the jurisdiction under s 17 is only available where there has been a trial on indictment. In the present case of a summary trial before a magistrate, s 12(4) of the Summary Jurisdiction (Appeals) Act, Cap 3:04, provides that a person appealing a magistrate's decision "may be admitted to bail upon application by him to the magistrate from whose decision appeal is made or on petition to a Judge of the High Court or, on refusal of any such petition, on petition to a Judge

of the Court of Appeal, and any such application or petition shall be heard as soon as practicable.” Cummings-Edwards JA and Reynolds J (an Additional Judge of the Court of Appeal) considered that “the full bench has no jurisdiction to entertain an application for bail in the circumstances of this case.” In case this was wrong they considered the merits of the bail application and refused to grant bail.

- [4] We agree with the majority that there was no jurisdiction in the Court of Appeal to hear the application. Consequently, any decision to refuse or grant bail was a nullity. Section 12(4) of the Summary Jurisdiction (appeals) Act was apparently designed to insulate the Court of Appeal, a court that given ss 11 and 17 of the Court of Appeal Act would naturally be consumed with weighty matters, from these fresh original bail applications in the interests of dispensing expeditious justice to persons with proper appeals before them. The Court of Appeal has an appellate jurisdiction not an original jurisdiction.
- [5] Similarly, the Caribbean Court of Justice, outside its original jurisdiction as the exclusive interpreter and applier of the Revised Treaty of Chaguaramas, has an exclusively appellate jurisdiction, albeit with ancillary powers. Thus, once the Court has before it a special leave application under s 8 of the Caribbean Court of Justice Act 2004 to appeal a decision that the Court of Appeal has jurisdiction to make, it has an ancillary power to grant bail pending the hearing of the application. It is most important, however, to realise that each application for bail in the Guyanese legal system is a fresh original application, so that even when an application is made under s 12 of the Summary Jurisdiction (Appeals) Act to a judge of the Court of Appeal on rejection of an application by a High Court judge, this is not an appeal to the superior judge but a fresh original application. If a Judge of the Court of Appeal rejects such an application in a case where there has not been a trial on indictment there is no possibility of a fresh original application either to the Court of Appeal or to the Caribbean Court of Justice, though an

application might still be made to a single judge of the Court of Appeal.

The Hon Mr Justice R Nelson

The Hon Mr Justice A Saunders

The Hon Mr Justice J Wit

The Hon Mr Justice D Hayton

The Hon Mr Justice W Anderson