IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Application No. GYCV2015/002
GY Civil Appeal No. 10 of 2010

BETWEEN

CHANDRA BABULALL **APPLICANT**

AND

PUBLIC TRUSTEE
In her capacity as the duly appointed
Administratrix of the Estate of MARY CHAN,
Deceased **RESPONDENT**

CCJ Application No. GYCV2015/003
GY Civil Appeal No. 9 of 2010

BETWEEN

WINSTON HARRY **APPLICANT**

AND

PUBLIC TRUSTEE
In her capacity as the duly appointed
Administratrix of the Estate of MARY CHAN,
Deceased **RESPONDENT**

[Consolidated by Order of the Court dated 19th May, 2015]

Before The Honourables **Mr Justice Saunders**
Mr Justice Anderson
Mme Justice Rajnauth-Lee

Appearances

Mr R Satram, Mr C V Satram and Mr M Satram for the Applicants
Mr Robin Stoby SC, Mr Mohamed Khan and Mr Kashir Khan for the Respondent

JUDGMENT
of
Justices Saunders, Anderson and Rajnauth-Lee
Delivered by
The Honourable Mr Justice Anderson
on the 27th day of July, 2015

Introduction

[1] On 14th January 2015, the Court of Appeal of Guyana ordered the Rice Assessment Committee for Essequibo (the Committee) to issue notices to quit to Chandra Babulall and Winston Harry (the Applicants) with respect to parcels of rice lands which they occupied in Section A, Plantation Annandale, Essequibo, Guyana. In so ordering, the court reversed the decisions of the Committee, given in July 2002. The Committee had ruled that it had no jurisdiction to hear the applications made by the Respondent, who is the Public Trustee, for leave to serve the notices. These applications had been brought by the Respondent in her capacity as Administratrix of the estate of Mary Chan (deceased), the owner of the entire 65 acre Plantation. The Applicants, by separate applications filed on 16th February 2015, sought special leave from this Court to appeal the Court of Appeal's decisions on the ground that they were not subject to the jurisdiction of the Committee as they were purchasers in possession and not tenants. They also sought an order directing that the hearing of the application for special leave be treated as the hearing of the substantive appeal.

[2] The applications were opposed by the Respondent on the basis that the grounds of appeal disclosed that the Applicants had appeals as of right and therefore they ought not to have proceeded by way of special leave. The Respondent also argued that an important condition for special leave, i.e., a realistic prospect of success, had not been met since the Applicants were tenants and they had produced no credible evidence of having purchased the lands such as copies of any agreements for sale or the terms and conditions upon which the alleged agreements had been made.

[3] The applications were consolidated and heard on 3rd June 2015. The Court had earlier indicated to counsel that if special leave to appeal was granted the hearing of the applications for special leave would be treated as the hearing of the substantive appeals. The litigants were forewarned that they should deploy at the special leave hearing all such arguments as they might have submitted if the actual appeals were being heard. Ultimately, we decided that in each case special

leave to appeal should be granted, the appeals would be allowed, the judgments of the Court of Appeal set aside and the decisions of the Rice Assessment Committee restored. We also ordered that costs be paid by the Respondent to be taxed if not agreed. We undertook then to give written reasons for our decision and we do so now.

Application for Special Leave to Appeal in "as of right" cases

[4] The Respondent referenced Section 6(1) of the Caribbean Court of Justice Act 2005[1] (the CCJ Act) which provides that an appeal lies to this Court from decisions of the Court of Appeal "as of right" where the appeal involves directly or indirectly a claim or question respecting property of the value of not less than one million dollars. The Respondent argued that the instant applications came within Section 6(1) of the CCJ Act and therefore the Applicants should have first applied to the Court of Appeal for leave to appeal to this Court as required by the then Caribbean Court of Justice (Appellate Jurisdiction) Rules 2005[2] (the AJR).

[5] Under the CCJ Act, there are two routes by which an appeal can reach this Court:- (i) via leave to appeal as of right: Section 6(1); and (ii) via an application for special leave: Section 8. The procedure governing as of right appeals is set out in Rule 10.2(a) of the AJR which provides that no notice of appeal shall be filed unless "leave to appeal to the Court has been granted by the Court below in cases in which there is an appeal as of right to the Court." Rule 10.3(1) requires that an application for leave under Rule 10.2(a) shall be made in writing within thirty (30) days of the judgment from which leave to appeal is sought. Rule 10.3(2) requires such application to state succinctly all facts as may be necessary to satisfy the court below that the applicant has a right of appeal. In accordance with these Rules, formal leave must be obtained from the local court even where the local statute or the Constitution grants an appeal "as of right": *Griffith v The Guyana Revenue Authority*.[3]

[1] Cap. 3:07.
[2] The Caribbean Court of Justice Rules 2015 which repealed the 2005 Rules only came into force on 16th April 2015.
[3] (2006) 69 WIR at 19.

[6] This Court has, on several occasions, clarified the procedures by which an applicant who has an appeal as of right may reach the Court. Most recently, in *System Sales Limited v Arletta Brown-Oxley*,[4] we indicated that the standard approach is by leave being granted by the Court of Appeal in accordance with the aforementioned Rules. Once the requirements of Section 6(1) are met, leave to appeal must be given by the Court of Appeal. The Court of Appeal has no discretion to refuse leave on the ground that the application is not meritorious. However this does not mean that an applicant who has an appeal as of right is foreclosed from seeking special leave before this Court directly.

[7] Section 8 of the CCJ Act allows an applicant to seek special leave directly from the CCJ to appeal any decision of the Court of Appeal in any civil or criminal matter. A litigant may apply for special leave after the Court of Appeal has refused his application for leave to appeal. Alternatively, he may by-pass the Court of Appeal entirely, even in an appeal "as of right", and seek special leave directly from the CCJ. However, in doing so the litigant runs the risk that his application may be dismissed if this Court is not satisfied that there is a realistic possibility of the appeal succeeding. Furthermore, where the litigant foregoes his "as of right" appeal by seeking special leave before this Court and his application for special leave is dismissed, any attempt to resuscitate the same by applying to the Court of Appeal for leave to appeal "as of right" is likely to be regarded as an abuse of process: *System Sales Limited v Arletta Brown-Oxley.*[5]

[8] From the foregoing it is clear that the Applicants in this case were perfectly entitled to apply to this Court for special leave to appeal. The real question is whether they have satisfied the Court that they have a realistic possibility of the appeal succeeding.

Factual Background

[9] On 29th May 2001, the Respondent commenced proceedings against the Applicants before the Committee seeking leave to issue notices to quit pursuant to

[4] [2015] CCJ 1 (AJ).
[5] Ibid.

the Rice Farmers (Security of Tenure) Act (the Act),[6] Section 29 (2) (a), (c), (d), (h) and (m). The Applicants denied that they were tenants.

[10] Winston Harry gave evidence that he had rented five and a quarter (5 ¼) acres of rice land from Mary Chan, and that following her death he had purchased the land from the Respondent. He also testified that he had signed the agreement for sale at the Office of the Public Trustee and that the purchase price was $12,000, on which he had made a deposit and subsequently paid the balance in instalments. He received receipts from the Respondent recording payments on account of the lands and tendered two such receipts into evidence. He also stated that he caused the lands to be surveyed and produced receipts showing his payment of rates and taxes. Under cross examination he admitted that he could not remember the date or any of the clauses or terms of the agreement for sale. He also admitted that he was the defendant in High Court proceedings 1665 of 1995 brought by the Respondent against him for squatting on the land, and that in his affidavit in those proceedings he had claimed the status of tenant, albeit in that affidavit he had also claimed to be entitled to a conveyance of the land on the ground of adverse possession.

[11] Bishwanauth Babulall, the son and holder of a Power of Attorney of Chandra Babulall, gave evidence that his father had purchased four (4) acres of rice land from the Respondent in 1980 for the sum of $4,800. The purchase price was paid in full and a further $600 had been paid to the Respondent for a survey of the land to be conducted. A number of receipts were tendered as well as correspondence from the Respondent supporting the claim of purchase. Babulall tendered a letter from the Public Trustee's Office dated 5th December 1980 which offered the rice lands for sale and invited Babulall to call at the office on 12th December 1980 in relation to the matter. Another letter dated 21st August 1982 from the Respondent stated that a survey was to be carried out on the land in order that transport could be conveyed to Babulall who was to pay his portion of the survey expenses amounting to $287.00. Babulall tendered several receipts from the Public

[6] Cap. 69:02.

Trustee's Office recording payments on account of the purchase price of the lands. Under cross examination he conceded that before 1980 his father was a tenant of the estate of Mary Chan in respect of the land. He admitted that he did not witness his father paying any money to the Office of the Public Trustee and that he had never seen the alleged agreement for sale. He also admitted that the Respondent had sued his mother in High Court action No. 1668 of 1995 in her capacity as Administratrix of the estate of his deceased father on the grounds that she was a squatter. He disputed that he had signed the affidavit in the High Court proceedings claiming the status of tenant but, in any event, noted that the affidavit also claimed entitlement to conveyance of the property on the grounds of adverse possession and of being a purchaser.

[12] The applications by the Respondent were heard by the Committee over a period of 27 hearing days, and an oral determination was given on 17th July 2002 followed by written memoranda of reasons. During the course of the hearing, the Committee, "declined to rule on the evidence as to whether [the Applicants] are purchasers or not."[7] In its oral decision the Committee dismissed the applications, ruling that it had "declined jurisdiction because these 2 persons [i.e., the Applicants] are not of the status to be before this Committee."[8] In its memoranda of reasons the Committee further explained the rationale for its decision on both applications in the following identical terms:

> "The Landlord gave evidence as to their ownership of the said land. The tenant showed the Committee an Agreement for Sale of the said land and claims the status of a bona fide Purchaser for value.
> The Committee failed to find the relationship of Landlord and Tenant and in this respect declined jurisdiction to hear this instant matter."

[13] The Respondent was dissatisfied with these decisions and appealed to the Full Court. That court raised the issue as to whether any appeal lay from the decision of the Committee to decline jurisdiction since the Committee had not determined the applications on the merits having failed to find that there were subsisting relationships of landlord and tenant between the Respondent and the Applicants.

[7] CCJ Record of Appeal p. 98.
[8] CCJ Record of Appeal p. 104.

Without making any finding with respect to the Committee's decision to decline jurisdiction, the Full Court found that the appeals were procedurally misconceived. It stated that the relief sought by the Respondent should have been applied for by way of prerogative writ and a writ of certiorari should have been brought to quash the decision of the Committee. The appeals were struck out and dismissed.

[14] The Respondent appealed the decision of the Full Court to the Court of Appeal which made two important findings, namely, that:

a. The Committee was wrong to find that it had no jurisdiction; and
b. The applications before the Committee were decided on their merits.

By way of relief, the Court of Appeal directed the Committee to issue notices to quit to the Applicants at its next sitting in accordance with the provisions of the Act.

[15] The Applicants appealed both decisions and the order of the Court of Appeal. The grounds of their applications are considered in turn in the following paragraphs.

Was the Committee wrong to decline jurisdiction?

[16] The Committee was first established by Section 7 of the Rice Farmers (Security of Tenure) Act 1956[9] and consists largely of lay assessors but with a chairman who is a Magistrate or a person appointed by the Minister in accordance with the advice of the Judicial Service Commission. The Committee has the powers and duties specified in Section 11 of the Act including assessing rent, hearing applications for the transfer of tenancies, granting leave to a landlord to reduce the size of a tenant's holdings and hearing applications for the recovery of holdings to which the Act applies. Section 29(1) empowers a landlord to apply for recovery of possession of any holding to which the Act applies. Section 29(2) sets out the conditions which must be satisfied before such an order may be made including non-payment of rent (Section 29(2)(a)), failure to cultivate (Section 29(2)(c)), wilful or negligent damage to a fence, dam, canal, drain or koker run (Section 29

[9] Act No. 31 of 1956.

(2)(d)), subletting without consent (Section 29(2)(h)), and where the land is required for paddy cultivation (Section 29(2)(m)). A landlord who seeks to terminate a tenancy pursuant to section 29(2)(m) on the ground that he requires the tenanted lands for his own use in the cultivation of paddy must comply with section 40(1) of the Act which requires, among other things, that the landlord obtains leave of the Committee to issue a notice to quit.

[17] Where section 40(1) applies, the Committee must be satisfied that the tenant is given an opportunity to make representations, the application was made in good faith, and that the application ought otherwise in the discretion of the Committee to be granted. The notice to quit must comply with section 40(2) which requires the landlord to give the tenant at least six months' notice in writing ending on the thirtieth day of June or the thirty-first day of December. If after this period of notice expires there has been no compliance with the notice to quit the Committee is empowered to make an order for recovery of possession pursuant to its powers and duties under section 10 of the Act. The Committee is given power to hear and determine applications for the recovery of holdings to which the Act applies, and may grant leave to the landlord to resume possession of rice lands in order that the land may be used for any purpose other than for the cultivation of paddy. The Committee may also hear and determine an application for re-instatement by a tenant who alleges that he was unlawfully dispossessed of his holding by a landlord and may award damages whether in lieu or in addition to an order for re-instatement.

[18] It is evident that a common thread running throughout the regime established by the Act is that the powers and duties of the Committee arise and become exercisable only where the relationship of landlord and tenant exists between the parties before it. However it is clear that any determination as to whether a person is a tenant or owner of the rice lands falls outside the ambit of the jurisdiction of the Committee. The Committee was established to further the objectives of the Act which, according to the Long Title, include providing better security of tenure for tenant rice farmers, limiting the rent payable for letting rice lands, and for

purposes connected with these matters. In fact, Section 51(1)(a) provides that any claim or proceedings arising under the Act involving the grant of equitable relief must be brought in the High Court. Furthermore section 51(3) states that the law and practice of the Magistrate's Court governs all proceedings under the Act. Under Section 3(3) of the Summary Jurisdiction (Petty Debt) Act,[10] a Magistrate is debarred from having "cognizance of any action in which any incorporeal right, or the title to any immovable property, is or may be in question."

[19] It follows from the foregoing that Parliament did not intend that the Committee would determine claims or title to immovable property. The issue of whether a party before the Committee claiming ownership of rice land has indeed a valid claim is to be determined by the High Court in the exercise of its ordinary civil jurisdiction.

[20] The question of jurisdiction is foundational and paramount. If a tribunal is satisfied that it has no jurisdiction to entertain an application made before it, it is duty bound to decline jurisdiction. This basic rule applies whether or not the parties raise the issue of jurisdiction, and even though the objection might have been taken, but was not, by the court below. *Dhajoo v Thom*[11] is a decision of the West Indian Court of Appeal in which the Chief Justice of St Lucia, presiding, said this:

> "It is, however, the first duty of every Court whether of first instance, or on appeal, adjudicating upon any given cause or matter, to satisfy itself on its jurisdiction and, if the Court is of opinion that it does not possess jurisdiction, in whatever manner any given matter may be brought before it, it is the duty of the Court, whether the question of jurisdiction is the subject of formal appeal or not, of its own motion to pronounce accordingly."

[21] Similarly, Lord Viscount Simon, L.C. in *Westminster Bank Ltd. v Edwards*[12] said:

> "There are, of course, cases in which a court should itself take an objection of its own motion, even though the point is not raised by any of the parties before it. A court is not required to entertain a case which is

[10] Cap. 7:01.
[11] [1939] LRBG 262 at 265.
[12] [1942] A.C. 529 at 532.

> brought before it only by collusion or other abuse of process. To give an absurd instance, a court cannot be required to decide what are necessaries for an infant if the parties collusively agree to treat the purchaser of the goods as under age when he is not under age at all. *Again, a court not only may, but should, take objection where the absence of jurisdiction is apparent on the face of the proceedings*. Thus, an appellate court not only may, but must, take the objection that it has no jurisdiction to hear an appeal if it is apparent that no right of appeal exists." (Emphasis added).

[22] In the present case, the applications by the Respondent for leave to serve notice to quit were opposed by the Applicants who asserted that they were owners of the land and not tenants. However the Committee could only exercise its duties and powers under the Act where the relationship of landlord and tenant with respect to rice lands existed between the parties.

[23] The Court of Appeal held that the Committee was wrong to find that it had no jurisdiction. In its Summary of Judgment that court stated:

> "There was a hearing before the Rice Assessment Committee on the collateral issue as to whether there existed the relationship of landlord and tenant between the Appellant and the Respondent but the Committee instead of determining the issue erroneously ruled that they had no jurisdiction. The evidence before the Committee was overwhelming and unchallenged that there exists the relationship of landlord and tenant between the parties. The decision of the Committee runs contrary to the provisions of the Rice Farmers (Security of Tenure) Act Cap. 69:02 which specifically provide it with exclusive jurisdiction to deal with the whole question of the relationship of landlord and tenant in and over rice lands. The decision of the Committee was arbitrary, oppressive and not in accordance with the statutory provisions, settled principles of law and authority and must be set aside."[13]

[24] With respect, we do not think that this assessment does full credit to the decision of the Committee and it is unfortunate that the court did not particularize the evidence it regarded as overwhelming. The issue of the ownership of the rice lands having arisen from the submissions of the parties, it was incumbent upon the Committee to establish that it had jurisdiction to determine that issue of ownership. The Respondent gave evidence as to the deceased landlord's

[13] Civil Appeal No 10 of 2010, Summary of Judgment delivered by Roy JA at [1].

ownership of the land but the Applicants claimed the status of bona fide purchasers for value. They both testified that they had purchased the rice lands from the Respondent and were placed in possession. There was some evidence to support the contentions of the Applicants in the form of numerous receipts and items of correspondence between the parties which evidenced the sale: [10] – [11] above.

[25] It is conceded that the evidence for the Applicants was by no means incontrovertible. During the course of the hearing before the Committee, Miss Hudson, the Trust Officer of the Public Trustee's Office, testified that there were no records supporting the claims by the Applicants that they had purchased their lots. In testifying before the Committee neither Applicant was able to produce the agreement for sale. It is to be noted that by the time it gave written reasons for its decisions the Committee stated that the tenants had showed the Committee agreements for sale of the lands. In the High Court action instituted by the Respondent seeking possession on the grounds that the Applicants were squatters, the Applicants admitted that they were tenants of the estate of the deceased Mary Chan, albeit simultaneously averring that they were entitled to conveyance of the transport on the basis of adverse possession. Babulall also averred that he had purchased the land.

[26] Faced with these competing claims and documentary evidence, including especially the receipts tending to establish purchase of the lands by the Applicants and the letters from the Respondent, the Committee was justified in its decision to decline jurisdiction to hear the applications for leave to issue notices to quit, given its misgivings as to whether the relationship of landlord and tenant existed between the parties. It must be remembered that the threshold for declining jurisdiction is a low one. Based on the conjoint effect of Sections 51(1) and Section 51(3) of the Act along with Section 3(3) of the Summary Jurisdiction (Petty Debt) Act[14] the Committee has no cognizance "of any action in which any incorporeal right or title to any immovable property, *is or may be in question*…"

[14] Supra at note 10.

(emphasis added). Therefore once there was some credible evidence that the issue of title to the lands had arisen between the parties, the Committee would be justified in refusing to exercise jurisdiction. The evidence need not be overwhelming or dispositive on the issue of ownership. That is a matter for litigation in the High Court. What is required before the Committee is some objective *prima facie* evidence that the relationship of landlord and tenant, if it existed, has been interrupted by the acquisition of, or a right to, title to the property. We are of the view that the evidence before the Committee was sufficiently credible for the Committee to decline to exercise jurisdiction in relation to the applications brought before it. Indeed, the Committee could hardly have done otherwise since at the time it declined jurisdiction the parties were engaged in litigation in the High Court on the precise issue of the ownership of the lands in question.

[27] Mr Stoby S.C., Counsel for the Respondent, argued that even if there was an agreement for sale and receipts recording payments on the purchase price from the Public Trustee's Office (none of which he admitted), those documents would not amount to title to immovable property or cause title to immovable property to be in question under Guyanese law. Counsel cited the decisions of this Court in the cases of *Ramdass v Jairam*;[15] *Ross v Sainclair (No. 2)*[16] and *Ramkishun v Fung Kee-Fung*[17] which establish that, unlike the common law, equitable interests in land are not recognized under the Roman-Dutch system of land law in Guyana.

[28] It is well established that an agreement for sale coupled with payment of the purchase price does not confer upon the purchaser an equitable interest in the land in Guyana. The purchaser is, however, entitled to seek from the vendor an order for specific performance of the agreement. The purchaser can obtain such an order provided that the vendor has not in the meantime conveyed the land to another purchaser who will have thereby acquired an indefeasible title subject only to the possibility of it being declared void for fraud.

[15] (2008) 72 WIR 270.
[16] (2009) 75 WIR 343.
[17] (2010) 76 WIR 328.

[29] But the issue in the present appeals is very different. We are of the opinion that, on the assumption (yet to be proved) that the Applicants entered into agreements for sale with the Respondent, paid the purchase price and were allowed to continue in possession, the Respondent is not entitled to bring an application seeking leave to issue notices to quit against the Applicants on the ground that the Applicants are mere tenants. Whatever may be the position of a third party bona fide purchaser for value under the Roman-Dutch land law in Guyana, the Respondent as vendor must, under general law, be estopped from treating a purchaser in possession as a mere tenant who may be evicted for non-payment of rent. Such as an estoppel might not create an interest in the land but it does constitute a bar to the vendor acting unconscionably towards the purchaser.

[30] We do not consider that the case of *Francis Jackson Developments Ltd v Stemp*[20] provides any assistance to the arguments of the Respondent. There a purchaser entered into an agreement for the purchase of a house and paid his deposit but was unable to complete the purchase by the date fixed for completion. The vendor expressly allowed the purchaser to enter into possession as a tenant at will. Subsequently, the vendor offered the purchaser the option of either paying an increased deposit or rescinding the contract, vacating the property and recovering back the deposit he had paid, or remaining as a tenant at a rent of 17s 6d a week. The purchaser declined the offer and the vendor's writ claiming possession of the property was rejected on the ground that there was a tenancy to which the Rent Restrictions Act applied. Clearly the present case is proceeding on the entirely different hypothesis that the agreement for sale has been consummated by the payment of the entire purchase price and possession on the part of the purchaser.

Were the applications decided on their merits?

[31] As mentioned above at [9], the applications filed by the Respondent before the Committee were predicated on Section 29 (2) (a), (c), (d), (h), and (m) of the Act. The relevant provisions of the Act read as follows:

[20] [1943] 2 All ER 601.

"29. (1) A landlord may apply to the assessment committee for the possession of any holding to which this Act applies.

(2) No order or judgment for the recovery of possession of any holding to which this Act applies, or for the ejectment of a tenant therefrom shall, whether in respect of a notice given or proceedings commenced before or after the commencement of this Act, be made or given unless –

(a) the tenant fails to pay the rent due by him by the time and in the manner it becomes due;

…

(c) the tenant without any reasonable excuse fails to use the holding wholly or mainly for the cultivation of paddy, and to cultivate at least one paddy crop in any year;

(d) where a landlord has constructed or maintained any fence, dam, canal, drain or koker run, the tenant by any wilful or negligent act or omission causes damage to any such work;

…

(h) the tenant sublets or assigns the holding without the consent of the landlord previously obtained in writing;

…

(m) the landlord of rice lands not exceeding in the aggregate one hundred acres, the proof whereof shall lie on him, and who is not a tenant requires the land for his own use in the cultivation of paddy

and in any such case as aforesaid the committee considers it reasonable to make the order or give the judgment.

Provided that no order or judgment for the recovery of possession or for the ejectment of a tenant shall be made or given –

(a) By reason of the non-payment of rent if the tenant's failure to do so has been occasioned by a total failure of his crop on account of an act of God, the proof whereof shall lie on the tenant; or

(b) Under paragraph (m) unless the committee is satisfied that the landlord would suffer greater hardship than his tenant unless he is granted possession and for that purpose shall, having regard to all relevant circumstances consider whether other rice lands are available to the tenant or under cultivation by him and, if so, whether any undue economic hardship would ensue to the landlord should an order be refused, save however, where such an order is made under the said paragraph section 32 mutatis mutandis applies."

[32] It follows that in determining whether leave should be granted to issue notices to quit the Committee is obliged to consider a variety of factors. In its adjudication, the Committee will be guided by the ground on which the application is based. As a general consideration, the Committee must also apply its mind to the reasonableness of granting leave. Where, as in this case, the ground of non-payment of rent is alleged there must be consideration of whether failure to pay was due to crop failure or act of God, albeit the tenant bears the burden of proving these facts. Where, as in this case, it is alleged that the landlord requires the holdings for his own use in the cultivation of paddy, the Committee must direct its mind to the question as to whether the landlord or the tenant would suffer greater hardship by granting leave. Before leave can be granted to issue the notice to quit the Committee must be satisfied that the procedural requirements of section 40 (2) have been satisfied. The Committee must be satisfied that the application for leave to issue the notice to quit was made in good faith.

[33] These matters were not considered or pronounced upon by the Committee and we therefore disagree with the decision of the court below that the applications were decided on the merits. It is true, as the Court of Appeal held, that there was "an abundance of evidence that formed part of the proceedings before the

Committee."[18] However, that evidence was primarily concerned with the jurisdictional question of whether the relationship of landlord and tenant existed between the parties and not with whether all the grounds for the substantive applications had been made out to the satisfaction of the Committee.

[34] Chang CJ (ag), delivering the judgment of the Full Court, held that as the Committee had not determined the applications on the merits but had merely declined jurisdiction, the appeals by the Public Trustee were procedurally misconceived. In his view, a party aggrieved by the decision of the Committee that it had no jurisdiction to hear the applications should approach the courts by way of application for the prerogative writ of certiorari and not by way of appeal. The court relied on the earlier Full Court decision in *Ridley v Bishop*[19] in which it was observed that where a Magistrate had not dealt with the case on the merits but had disposed of it without coming to a conclusion on the facts the decision could not be challenged by way of appeal but only by way of the prerogative writ procedure. The court also referred to *Gangasarran v Misrepersaud*[20] where Luckhoo CJ suggested that the correctness of the decision by the Rice Assessment Committee as to whether the relationship of landlord and tenant exists is properly challenged by writ of certiorari. Luckhoo CJ also doubted "whether there is a right of appeal given in respect of collateral questions such as jurisdiction"[21] but did go on to conclude, from the evidence adduced, that the Committee's findings that a relationship of landlord and tenant did exist could not be successfully impeached.

[35] There is undoubtedly a distinction between a jurisdictional finding by the Committee that there exists the relationship of landlord and tenant and the consequential decision on the applications on their merits, on the one hand, and the preliminary decline of jurisdiction with the corollary failure to decide the applications on the substance, on the other. In the former case the merits have been decided and therefore a right of appeal clearly arises; in the latter, the merits

[18] Supra, note 15 at [2].
[19] [1956] LRBG 104.
[20] [1966] LRBG 60.
[21] Ibid at p. 65.

have not been investigated hence the view, accepted by the Full Court in the present case, that there is no decision from which to appeal.

[36] As a general proposition, this Court is reluctant to dispose of proceedings on the purely technical ground that the wrong procedure was employed by the parties in approaching the courts. We anxiously await the coming into force of the new Civil Procedure Rules for Guyana which will do much to simplify and thereby improve the law in this area. In the interregnum we consider that it is appropriate to give as generous an interpretation of the relevant statutory provisions on procedural access to the courts as would permit consideration of the dispute brought by the parties unless there is some express statutory provision or strong reason of policy that prevents the adoption of such an interpretation.

[37] There are no such prohibitions in this case. To the contrary, Section 26(1) of the Act provides a right of appeal to the High Court by any landlord or tenant who is dissatisfied with "a decision" of an assessment committee under the Act. The term "decision" is not expressly defined in the Act and must therefore be understood in light of the scope of determinations that the Committee may make. The powers and duties of the Committee are spelt out in Section 11 and include "any power or duty incidental to the carrying out of any such power and duties." A determination of whether the relationship of landlord and tenant exists is "incidental" to the carrying out of the powers and duties of the Committee and is therefore a "decision" within the meaning of Section 26(1). It would therefore appear that after the Committee has heard evidence its decision on the question of its jurisdiction to determine an application before it is appealable, whatever may be the competence to approach the court by prerogative writ. This approach is in keeping with several cases permitting appeals in respect of challenges to decisions by Magistrates' courts declining jurisdiction: *John Nagreadie v Noor Abjal*;[22] *Chung v London*;[23] and *Sase Budhoo v Budhai Singh*.[24]

[22] (1972) 20 WIR 91.
[23]]1966] LRBG 119.
[24] (1976) 24 WIR 54.

Was it permissible for the Court of Appeal to direct the Committee to issue the notices to quit?

[38] Section 40(1) of the Act provides that a landlord who desires to resume possession of any rice lands may make an application in writing to the assessment committee of the area in which such land is situate for leave to give his tenant notice to quit such land. The committee may grant leave to the landlord to issue the notice if it is satisfied that the conditions in the section have been met, and the landlord must ensure that the notice conforms to the requirements of section 40(2). The Committee has no authority itself to issue a notice to quit to a tenant. The Court of Appeal was therefore wrong to remit the case to the Committee with the direction that it issue, at its next sitting, the notices to quit. The most that could have been directed was that the Committee discharge its statutory duty to consider whether leave should be granted to permit the landlord to serve the notices but such an order would clearly not have been inappropriate in this case.

Conclusion

[39] For the reasons given we are of the opinion that the Committee was right to decline jurisdiction to hear the applications and therefore that the appeal against the decision of the Court of Appeal must be upheld. The consequence is the orders we made on 3rd June 2015, and which are recorded at [3] of this judgment.

/s/ A. Saunders
The Hon Mr Justice A Saunders

/s/ W. Anderson
The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee
The Hon Mme Justice M Rajnauth-Lee