

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

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No. BBCV2016/004
BB Civil Appeal No. 2 of 2015

BETWEEN

SHERYARD DEANE

APPELLANT

AND

CYNTHIA ALLAMBY

RESPONDENT

**Before The Right Honourable
and the Honourables**

**Sir Dennis Byron, President
Mr Justice Saunders
Mr Justice Wit
Mr Justice Hayton
Mme Justice Rajnauth-Lee**

Appearances

Mr Clement E Lashley, QC and Ms Honor Chase for the Appellant
Mr Errol Niles for the Respondent

October 31, 2016

REASONS FOR THE DECISION

of

**The Right Honourable Sir Dennis Byron, President, and the Honourable Justices
Saunders, Wit, Hayton and Rajnauth-Lee**

Delivered by

**The Right Honourable Sir Dennis Byron
on the 23rd day of November 2016**

Introduction

[1] This appeal was filed before the CCJ on 29th July, 2016 seeking an order that would allow the Appellant to file an appeal before the Court of Appeal out of time. Sheryard Deane, (hereinafter “the Appellant”), contended that the Court of Appeal erred in deciding that it could not extend the time for giving notice to appeal from the Magistrate’s Court, and that even if it could, there was no reasonable justification for doing so. Cynthia Allamby, (hereinafter “the Respondent”), contended that there was nothing before the court as the appeal was a nullity. We heard the appeal and dismissed it on 31st October, 2016. These are our reasons.

The Background

[2] On 6th December, 2013, the Respondent commenced ejectment proceedings against the Appellant in the Magistrate’s court. The complaint sought a repossession order for a parcel of land that was occupied by the Appellant as a tenant on the ground that the tenancy had either expired or was terminated by way of notice. On 21st July, 2015, the learned Magistrate, Her Worship Ms Wanda Blair, ordered that the Appellant vacate the premises by 22nd September, 2015. Neither the Appellant nor her counsel in the matter, Mr Lashley QC, appeared for the trial.

[3] On 1st October, 2015, the Appellant filed an application in the Court of Appeal of Barbados for an extension of the 7-day time limit in which to file a notice of appeal against the decision of the learned Magistrate. The Court of Appeal dismissed the application on 2nd March, 2016 and subsequently granted leave to the Appellant to appeal to this Court.

Is the appeal a nullity?

[4] Mr Niles, Counsel for the Respondent, contended that the proceedings before the Court of Appeal were for leave to file an appeal out of time and since leave was refused, there was never any appeal before the Court of Appeal. He relied on the dicta of Crane J in *James v Crawford*¹ in which a distinction was made between the status of an intended appellant and an appellant and submitted that in this case there was never an appellant before the Court of Appeal. He also submitted that the decision of a court in refusing to extend time to appeal

¹ (1969) 14 WIR 338.

is not an order or judgment from which there can be an appeal, relying on dicta from Lord Mance in *Noel Campbell v Queen*.²

[5] In this case, the Court of Appeal granted leave to appeal under section 7 of the Caribbean Court of Justice Act, Cap. 117, and the appeal was regularly filed in accordance with the rules of court. Section 7 of the Act provides that:

“An appeal shall lie to the Court with leave of the Court of Appeal from the decisions of the Court of Appeal:

(a) in any civil proceedings where, in the opinion of the Court of Appeal, the question is one that by reason of its general or public importance, or otherwise, ought to be submitted to the Court; and

(b) in such other cases as may be prescribed by any law.”

[6] The powers conferred under section 7 of the Caribbean Court of Justice Act, Cap. 117 give the Court of Appeal an independent and exclusive power to rely on its opinion to determine whether a question raised on appeal from any decision is of general or public importance and ought to be submitted to the Court. The Court of Appeal would be entitled to reject any application under this section if it was aimed at appealing a decision simply refusing leave to appeal. This would be in keeping with the dicta of Lord Mance to which Mr Niles had referred. After explaining that in *Lane v Esdaile*,³ the House of Lords held that there could be no appeal to the House in respect of a decision of the Court of Appeal to refuse special leave to appeal to it outside the relevant one-year period, Lord Mance summed it up⁴ by saying that “the implicitly intended finality of an order refusing leave to appeal, the “absurdity” of allowing appeals on the question whether there should be leave to appeal and the “common-sense” of the rule in *Lane v Esdaile* were all reaffirmed” in several cases.

[7] However, the Court of Appeal had not simply refused to extend time to appeal. The decision was based on statutory interpretation. In this case, the question related to whether its interpretation that the Magistrate’s Court Act, Cap. 116A denied jurisdiction to extend the time to appeal was correct. This was a question which affected every litigant who desired to appeal from the decision of a Magistrate. Thus, the Court of Appeal was entitled to consider that there was general or public importance in the appeal. The statute

² [2010] UKPC 26 at paragraph [18].

³ [1891] A.C. 210 at 214.

⁴ [2010] UKPC 26 at [19]

unequivocally empowers the court to grant leave once it held that opinion. In any event, and *en passant*, it would not appear that an appeal against such a decision could be open even if one did not agree with the Court of Appeal. Thus, we considered that we ought to consider the merits of the appeal and rejected Mr Niles' submission.

Was the Court of Appeal empowered to extend the time for appeal?

[8] The crux of the Appellant's argument before this Court was that Goodridge JA erred in law when she concluded that the Court of Appeal had no jurisdiction to extend the time for hearing magisterial appeals. Mr Lashley contended that power to extend the time for magisterial appeals was conferred by the Magistrates Court (Civil Procedure) Rules 1958, enacted under the authority of the Magistrates Jurisdiction and Procedure Act 1958. This argument could not be sustained because section 269(2) of the Magistrate's Court Act 1996, Cap. 116A was specifically repealed the 1958 Act. In Barbados, the repeal of primary legislation necessarily entails the repeal of the subsidiary legislation made under its authority. This is the effect of section 29(2) of the Barbados Interpretation Act, Cap. 1, which provides:

“29. (2) Nothing in subsection (1) shall be taken to authorise the continuance in force after the repeal or revocation of an enactment of any instrument made under that provision.”

[9] The rules governing magisterial appeals are set out in the Magistrate's Court Act, Cap. 116A, sections 238 to 267. These rules make provision for persons who are dissatisfied with a conviction, decision, judgment or order of a Magistrate to have a right of appeal and set out the procedures to be followed. The time limited for appealing is fixed by section 240(2) which prescribes that notice of appeal must be given within 7 days after the order against which it is intended to appeal was made. The statute does not make any provision for granting extensions of time.

[10] Goodridge JA relied upon a judgment she had previously given in *Oscar Maloney v Commissioner of Police*, Magisterial Appeal No 6 of 2014, as well as the judgment of Wooding CJ in the Court of Appeal of Trinidad and Tobago in *Stanley v Andrews*.⁵ These

⁵ (1963) WIR 453.

cases elucidate the well-established principle⁶ that powers conferred by statute must be read subject to the limitations and conditions prescribed by statute; and that where a time limit is prescribed by a statute, the court does not have power to extend the time unless the statute gives it the power to do so.

[11] We confirm that there is no statutory power to extend the 7-day time limit prescribed by section 240(2) of the 1996 Act, Cap. 116A.

[12] However, we caution that this does not necessarily translate into an absence of jurisdiction of the court to extend time. The court must preserve jurisdiction to give effect to section 18(1) of the Barbados Constitution which affords citizens the right to a fair trial within a reasonable time. An example, which may seem obvious, could arise if there was a national disaster, such as a hurricane, which shut down the country and the court making it impossible to comply with the statutory time limits. In a circumstance such as that, the court would have jurisdiction to make orders to give effect to the constitutional right to a fair trial and facilitate access to justice for citizens at the broader level.

Would the Court extend the time for appeal in this case if it had jurisdiction?

[13] Mr Lashley criticised the Court of Appeal for ruling that even if it had power to order an extension of time no grounds were presented to justify granting any extension of time. We thought that it would be useful to explain why his criticisms were unfounded. It is well established that in approaching the question whether to grant an extension of time the court must examine and evaluate whether there were good grounds for the delay and to look at the merits of the case to determine whether there were real prospects of the appeal being successful. We have reiterated this principle in our jurisprudence, most notably in the *Rambarran*⁷ decision, where we approved the *dicta* of Simmons CJ in *Robert Martin Glenn v the Queen*.⁸

⁶ See: *Barker v Palmer* (1881) 8 QB; *Duke of Atholl v Read* [1934] 2 KB 92; *Edwards v Edwards* [1967] 2 All ER 1032, [1968] 1 WLR 149.

⁷ *Rambarran et al v the Queen* [2016] CCJ 2 (AJ). See also: *Somrah v The Attorney General of Guyana and The Police Service Commission* [2009] CCJ 5 AJ.

⁸ Criminal Appeal No. 15 of 2000.

The merits of the substantive appeal

[14] The Appellant did not allege that there was any defence to the claim to recover possession and the only issue she raised with the decision was the time allowed to vacate possession. There was no rebuttal to the Respondent's submissions that the tenancy had been terminated in full compliance with the provisions of the Security of Tenure of Small Holdings Act, Cap. 237. The Appellant did not show that there was any prospect that the order of the Magistrate would be reversed.

The reasons for delay

[15] Successive and readily granted adjournments pushed this case back almost 18 months. It was set down for hearing on 20th June, 2015. The Appellant appeared but not her counsel. At the request of the Appellant and in her presence in open court, the learned Magistrate adjourned the case to 21st July, 2015. Neither the Appellant nor her counsel attended the hearing. The Appellant testified that she attended court on 22nd July instead. She thought that since the Magistrate usually set the matter down on Wednesdays, she must have meant the 22nd instead of the 21st and she said that she had called the court office and a clerk had told her the matter was not listed for 21st July.

[16] Systemic judicial delay is often due to non-adherence to reasonable procedural timeframes. Successive adjournments result in cases not being disposed of in a reasonable timeframe and is a problem that needs to be corrected. Courts ought to adhere to the principle of making trial dates certain and binding. Failure to do so has seriously adverse implications for the administration of justice and the public confidence in the court system.

[17] In his submissions to the Bench, Mr Lashley alluded to a culture of delay in Barbados where it is expected that lower courts would adjourn matters to accommodate counsel who had booked more than one appointment at the same time, even when counsel had not made any application for an adjournment. If courts were bound by such an obligation, which of course they are not, they would be totally at the mercy of counsel, and could not guarantee the disposal of their cases. Counsel must be obliged to attend court on time when their matters are scheduled for hearing and should be held to account for default of this obligation. The decision of Her Worship Ms Wanda Blair to proceed with hearing the

matter on 21st July, 2015, in the absence of counsel and client, was made after the Appellant had been afforded reasonable opportunities to be heard and was entirely justified.

[18] The Appellant testified that on 22nd July, 2015, when she attended court she was informed that her case had been heard on the previous day and that she was ordered to vacate her house spot by 22nd September, 2015. In effect, she admitted that she knew of the order in time to comply with the 7-day time limit for appealing. However, no appeal was lodged until 1st October, 2015, more than two months later. It is natural to link the date on which the application for an extension was filed with procedures for ejectment that may have commenced to give effect to the order of the Magistrate. However, the testimony of the Appellant was that she was told by a Clerk of Court that her case had been adjourned to 22nd September and it was only when she attended court on that day that she believed that the order had been made. This explanation, even if true, does not explain the role of her counsel whose simple enquiry would have provided information as to what was on the record of the court.

[19] In these circumstances, it is clear to us that no good reason has been shown for the delay to file the notice of appeal within the 7-day time limit and we support the conclusion of Goodridge JA that no justifiable reasons have been offered to support the exercise of discretion in favour of the Applicant, even if there was the power to make such an order. Meanwhile, one cannot escape the practical but saddening conclusion that the Appellant through her counsel's procedural manoeuvring, has succeeded, without providing any proper reason or justification, in delaying with more than a year her vacating the land she has been occupying. This provides one reason more for the courts to maintain a strict approach with respect to keeping the parties within a reasonable timeframe.

Disposal

[20] Since the date for vacating possession of the premises has passed, the Court, in the interests of justice, asked counsel to agree on a date to be assigned by which the property should be vacated. They agreed upon 28th February, 2017. Counsel also agreed on costs.

[21] For these reasons the Court made the following orders:

- (i) The Appeal is dismissed.

- (ii) By Consent, the order of the Magistrate dated 21st July, 2015, from Magistrate's Court for District E in Holetown, Barbados, is varied to permit the Appellant time to vacate the premises at Cemetery Lane, Road View, St. Peter on or before 28th February, 2017.
- (iii) By Consent, the Appellant pays costs to the Respondent in the amount of BD\$7,500.00.

/s/ CMD Byron

The Rt Hon Sir Dennis Byron (President)

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ D. Hayton

The Hon Mr Justice D Hayton

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee