

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

**ON APPEAL FROM THE COURT OF APPEAL OF GUYANA**

CCJ Appeal No. GYCV2017/001  
GY Civil Appeal No. 47 of 2016

**BETWEEN**

**RUBY MITCHELL**  
**OWEN MITCHELL**

**APPLICANTS**

**AND**

**JOHN WILSON**

**RESPONDENT**

**Before The Right Honourable**  
**and the Honourables**

**Sir Dennis Byron, President**  
**Mr Justice Wit**  
**Mr Justice Hayton**

**Appearances**

Mr. Lyndon Amsterdam for the Applicants  
Mr. C.V. Satram for the Respondent

**REASONS FOR THE DECISION**

**of**

**The Right Honourable Sir Dennis Byron, President**  
**the Honourable Justices Wit and Hayton, JCCJ**

**Delivered by**  
**The Right Honourable Sir Dennis Byron**

**on the 13<sup>th</sup> day of March 2017**

## **Introduction**

- [1] The Applicants, having filed a case in the High Court against the Respondent in 2003 received a final decision twelve (12) years later, on 2<sup>nd</sup> March, 2015. That decision disappointed the Applicants so they filed a Notice of Appeal in the Court of Appeal, on 17<sup>th</sup> April, 2015, which due to a calculation error of their counsel, was four days late. Instead of immediately applying for an extension of time which might have mended that minor delay, they initially did nothing. Then, almost one year later, on 21<sup>st</sup> March, 2016, they suddenly withdrew the Notice of Appeal and, on 12<sup>th</sup> April, 2016, three weeks later, filed the application to enlarge the time for filing a Notice of Appeal.
- [2] The Court of Appeal acted expeditiously. It heard and dismissed that application on 15<sup>th</sup> June, 2016. Still, it took the Applicants until 25<sup>th</sup> January, 2017, to apply for special leave to this Court to appeal that dismissal. Apparently, the reason for that delay was that counsel wrongly pursued an application before the Court of Appeal for leave to appeal to the CCJ, and it was only after the Court of Appeal pointed him to the relevant provisions of the Caribbean Court of Justice Act 2004, Act No. 16 of 2004 (“the CCJ Act”) that the Applicants withdrew that application and applied to this Court for special leave. In any event, the Applicants are again out of time but have not applied to this Court for an extension of time to file the special leave application. How many errors can one make?

## **The Issues in this Application**

- [3] The underlying case is a family dispute between a sister, the first Applicant and her brother, the Respondent, over family property purchased by their mother, Ruth Wilson, upon which stands a dwelling house that they helped to construct. The Respondent has lived in the downstairs of the property ever since it was constructed around 1967. Without going into detail, the first Applicant acting as attorney for Ruth Wilson executed a deed of transport to herself by way of gift just about two weeks before the death of Ruth Wilson. She subsequently executed a deed of transport to herself and the second Applicant jointly. They initiated proceedings to evict the Respondent, who defended and counterclaimed the action on the ground of fraud among other things, while also maintaining that the property belonged to him and the first Applicant in equal shares.

The judge found that the title deeds in the name of the Applicants were tainted with fraud and declared them null and void.

- [4] The application before us is hopeless. It is already settled that the failure to apply for an extension of time is a sufficient reason to dismiss the application for want of jurisdiction. Additionally, there is an underlying public interest in the timely and final resolution of disputes reinforced by the current emphasis on efficiency and economy in the conduct of litigation. So, it is relevant that this case was initially filed some fourteen (14) years ago. However, we are required to balance the public interest in the just resolution of disputes which was referenced in *Blackman v. Gittens-Blackman and Another [2014] CCJ 17 (AJ)*, where this Court held that “while in the absence of an application for an extension of time it has no jurisdiction to entertain the special leave application, the Court may in a proper case grant an extension of time for compliance with the Rules or excuse delay, to avert a clear miscarriage of justice.”
- [5] The overriding objective of the Rules set out in part 1.3 requires us to discourage unnecessary disputes over procedural matters. This is a procedural dispute and in considering the requirements of a just result we should also consider that the resources to be allocated to the case should be proportionate to its complexity. Having thoroughly reviewed all the material filed, we have decided to issue this decision without a hearing.
- [6] The systemic delays in this case show a long history of counsel errors, which have led the Applicants to change lawyers more than once. Courts rightly are tending increasingly to insist on high standards from counsel. Misunderstanding by counsel of the time limit for filing a Notice of Appeal is not considered a good reason for extending a time limit. An attorney’s ignorance of the rules will rarely, if ever, provide a good reason for failing to comply with them<sup>1</sup>. Errors that cause inexcusable or reprehensible delay may amount to professional misconduct<sup>2</sup>. We acknowledge that minor infractions which do not prejudice the other parties, the timeliness of the resolution of the dispute and the administration of justice need not always result in turning away litigants from the seat of justice. But, in this case, the breach of time standards is not trivial: the delay is inordinate.

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<sup>1</sup> R (Hysaj) v Secretary of State for the Home Department; Fathollahipour v Aliabadibenisi; May v Robinson [2015] 1 WLR 2472

<sup>2</sup> Ramonyai v L P Molohe Attorneys (2010/29310) [2014] ZAGPJHC 65 (27 February 2014)

[7] We are satisfied that the decision of the judge did not result in a miscarriage of justice. Even though some of the reasoning of the judge may be flawed, the decision itself does not strike us as manifestly unjust, on the contrary. The application for special leave to appeal is therefore dismissed for want of jurisdiction. We order that the Applicants pay the Respondent's costs.

### **Costs**

[8] Part 18.10 (1) of the Rules prescribes that "where the Court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount that the Court deems to be reasonable and which appears to the Court to be fair, both to the person paying and the person receiving such costs". This was a simple procedural appeal and we have decided that basic costs for appearance in Court for special leave to appeal set out in Schedule 2, (Part B) to the Rules is reasonable and fair to both parties.

### **Disposal**

- [9] In the circumstances we make the following orders:
- i. The application for special leave to appeal is dismissed; and
  - ii. The Applicants are ordered to pay the costs of the Respondent in the sum of One Hundred and Seventy-Nine Thousand and Five Hundred Guyana Dollars (GY\$179,500).

/s/ CMD Byron

**The Rt. Hon Sir Dennis Byron (President)**

/s/ J. Wit

**The Hon Mr Justice J Wit**

/s/ D. Hayton

**The Hon Mr Justice D Hayton**