IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No BBCV2017/004
BB Magisterial Appeals Nos. 8, 9 & 10 of 2004

BETWEEN

SANDY LANE HOTEL CO. LIMITED **APPELLANT**

AND

JULIANA CATO
WAYNE JOHNSON
CHARMAINE POYER **RESPONDENTS**

Before the Honourables **Mr Justice Adrian Saunders**
Mr Justice Jacob Wit
Mr Justice David Hayton
Mr Justice Winston Anderson
Mr Justice Denys Barrow

Appearances

Mr. Satcha S.C.S. Kissoon and Mr. Phillip A. McWatt for the Appellant

Mr. Edmund Radcliffe King Q.C. and Ms. Nailah Petra Robinson for the Respondents

JUDGMENT
of
The Honourable Justices Saunders, Wit, Hayton, Anderson and Barrow

Delivered by
The Honourable Mr Justice Denys Barrow
on the 26th day of March, 2018

[1] This appeal raises the important practical questions for lawyers, litigants and the judiciary in Barbados, whether different legislation provides two different ways for appealing against a decision of the Magistrate's Court and, if so, whether they can both co-exist. The various answers proposed in argument are that there is only one way of appealing; existing statutes provide two but they conflict; if there are two, one is ultra vires or there are two and an appellant can proceed either way. It readily appears that leave to appeal would have been properly granted, in accordance with section 7 of the Caribbean Court of Justice Act, Cap. 117, on the basis that the appeal raised a matter of general public importance.

The context

[2] The question comes before this Court in a purported appeal against the decision of a Magistrate, holding that the appellant (Sandy Lane) wrongfully terminated the employment of three employees (the employees), who brought separate claims, contending that Sandy Lane acted wrongfully in terminating their employment on the basis that it could pay them salary in lieu of notice. On 24th September 2014 the Magistrate gave a decision that Sandy Lane had acted wrongfully in so terminating and that the employees were entitled to damages "in the sum claimed". When the Magistrate had given her decision, counsel for Sandy Lane rose in court and gave notice that his client would appeal and asked for a stay of execution of 6 weeks, which was granted. This is as stated in an affidavit by counsel, filed in the Court of Appeal, and although counsel for the employees stated there was nothing on the record of the proceedings to show this occurred - counsel for the employees was not present at this time - in the circumstances, including the absence of any objection to its admission, we accept this evidence from counsel for Sandy Lane.

[3] Further to that, on 1st October 2014, counsel for Sandy Lane wrote a letter addressed to the Magistrate, which he deposed he personally delivered to the clerk to the Magistrate, which stated "… take notice my client is appealing the said matter and will require the Court's reasons in advance of settling its grounds of appeal."

[4] Following that action, on 8th October 2014, acting in accordance with Part 62 of the Supreme Court (Civil Procedure) Rules 2008 (CPR) counsel for Sandy Lane filed in the Court of Appeal a formal notice of appeal against the decision of the Magistrate utilising Form 20 of the CPR.

The Decision of the Court of Appeal

[5] The appeal filed by Sandy Lane came on or before the Court of Appeal on 9th February 2017 and the court raised with counsel for Sandy Lane the jurisdictional question whether, in light of the decision of the Caribbean Court of Justice (the CCJ) in *Deane v Allamby*,[1] the Court of Appeal could hear an appeal brought otherwise than in accordance with the provisions of section 240 of the Magistrates Court Act Chapter 116A, the provisions of which we will set out shortly. The Court of Appeal then gave the parties time to prepare submissions on the point and, after this had been done, heard arguments and gave a decision that the appeal was a nullity because it had not been brought within the 7 days for appealing mandated by section 240 of the Magistrates Court Act.

[6] In a written judgment delivered on 23rd May 2017, the Court of Appeal reasoned that the decision in *Deane v Allamby* established that section 240 governed appeals from the Magistrate's Court, that there was a 7-day time limit for appealing and there was no power in the courts to extend time, because the statute conferred no such power. The court held it followed from that decision that the rules governing magisterial appeals were to be found in the Magistrate's Court Act and not Part 62 of CPR. Therefore, the court decided, the 7-day time limit applied and not the 28 days given in CPR.

[7] The court also considered whether the verbal notice given by counsel on the day the magistrate pronounced her decision and the letter counsel delivered to the clerk on 1st October 2014 were sufficient to satisfy section 240 and concluded they were not. The court reasoned, as to the first, that this notice was given to the magistrate and not to the clerk and, as to the second, that this notice was addressed to the magistrate and not the clerk and, implicitly, it was not in the prescribed Form 22. Therefore, the court concluded, neither notice complied with the statutory requirement for giving notice.

The Magistrate's Court Act appeal provisions

[8] The provision which the Court of Appeal decided applied solely, was section 240 of the Magistrate's Court Act Chapter 116A, which states as follows:

[1] [2016] CCJ 21 (AJ).

"240. (1) An appeal shall be commenced by the appellant giving to the clerk notice of such appeal, which may be verbal or in writing in the prescribed form, and if verbal shall be forthwith reduced to writing in the prescribed form by the clerk and signed by the appellant or by his attorney-at-law.

(2) The notice of appeal shall, subject to subsection (3), be given in every case within 7 days after the day on which the magistrate dismissed the information or complaint, convicted or made the order or refused to convict or make the order or gave his judgment or decision.

(3) ……

(4) The clerk shall, within 21 days, transmit to the Registrar a copy of every notice of appeal given under this section; and the Registrar shall cause particulars thereof to be entered in a register to be known as the "Register of Magistrates Appeals", which shall be kept at the Registry.

(5) The Registrar shall, once every quarter, make a return of the particulars mentioned in subsection (4) to the Chief Justice."

The decision in *Deane v Allamby*

[9] Contrary to the view of the Court of Appeal as to what the CCJ decided in *Deane v Allamby*, and in disregard of the invitation of counsel for Sandy Lane to this Court to overrule its decision in that case, we are satisfied that decision has little implication for this case. The straight and singular question in *Deane v Allamby* was whether, in relation to an appeal sought to be brought out of time, pursuant to section 240 of the Magistrates Court Act, jurisdiction existed to extend the time within which to appeal. The CCJ examined the law surrounding time limits established by statute, where a right was conferred to act within a time limit, and confirmed the well-known proposition that a court has no jurisdiction to grant an extension of time for which the statute did not provide. That was, substantially, the only matter the CCJ decided in that case. Emphatically, it did not even mention, far less consider, Part 62 of the CPR. It did not consider whether CPR had any relevance to appeals from a magistrate's court. In that case, in contrast to the instant appeal, the intending appellant had not filed a notice of appeal pursuant to Part 62 of CPR.

Did Sandy Lane appeal?

[10] Sandy Lane submitted that irrespective of whether the applicable procedure for appealing from a Magistrate's court resided in the Magistrates Court Act or the CPR, it had validly appealed. As it had done in the Court of Appeal, Sandy Lane argued that it has complied with the requirements of section 240. In considering this argument we

note that, with proper candour, counsel for Sandy Lane has consistently acknowledged that he did not intend to satisfy the requirements of section 240 of the Magistrates Act because he always intended to appeal pursuant to Part 62. Counsel informed this Court that it is the common practice in Barbados for counsel to appeal against decisions of magistrates in accordance with Part 62. However, counsel argued, if the Part 62 appeal procedure was not valid, he had satisfied the Magistrates Court Act procedure.

[11] The procedure in the Magistrates Court Act for appealing requires an intending appellant or his attorney at law to give either verbal or written notice to the clerk. If he gives verbal notice it is the duty of the clerk to reduce the notice to writing and have the appellant or his attorney sign it. In this case, counsel argued, when he rose in court and requested (and was granted) a stay of execution of the Magistrate's decision because Sandy Lane would appeal, this was done in the presence and hearing of the Clerk and, therefore, notice of the intention to appeal was clearly communicated to the Clerk. In addition, counsel argued, he personally handed to the Clerk his letter dated 1st October 2014 which stated Sandy Lane is appealing and, notwithstanding the letter was addressed to the magistrate, it was notice given to the Clerk.

[12] As noted above, at [7], the Court of Appeal rejected both arguments and, in this Court, counsel for the employees was content to rely on that determination and to draw attention to Form 22 to the Magistrate's Court Act, which is the form for appealing.

[13] It is undeniable that on the day of the decision Sandy Lane verbally gave immediate, public notice of its intention to appeal and, a week later, within the time limited by section 240, expressly declared in writing that it was appealing. In relation to the verbal notice, it is true that counsel did not go to the Clerk at her/his desk and state, at that physical location, that Sandy Lane was appealing. And it is also true that counsel did not intend that notice to operate in satisfaction of section 240 and that the clerk did not receive that notice as so operating. However, as a matter of substance, notice was given and it has not been argued that anyone had any doubt that Sandy Lane was giving notice of its intention to appeal. It should not matter that Sandy Lane, in giving that notice, intended to give notice later, under Part 62.

[14] In relation to the letter of 1st October 2014, in which counsel for Sandy Lane stated that, by that letter, Sandy Lane 'is appealing" and will need the Court's reasons to settle its grounds of appeal, the reason why the Court of Appeal rejected this as notice, at [21], was that it was addressed to the Magistrate and not the Clerk. It was revealing to look at the form and consider the greatly overlooked fact that this form of notice was drafted to be served on the respondent and the Magistrate and not the Clerk. This supports the conclusion that it does not matter that the 'letter of appeal' was addressed to the Magistrate and not the Clerk. The form appears as follows:

FORM 22

(Order 21. R. 2 (2))

NOTICE OF APPEAL

IN THE FULL COURT OF THE SUPREME COURT
OF BARBADOS

On appeal from the Magistrate's Court for District
Civil Jurisdiction

Between	{	Plaintiff or Defendant	}	Appellant
A.B.				
And	{	Defendant or Plaintiff	}	
Respondent				
C.D				

TAKE NOTICE that this Court will be moved on a day and at an hour of which you shall be informed by the Registrar by Counsel on behalf of the (plaintiff, or as may be) that (here state concisely the object of the appeal).

Dated this day of 20

A.B. Appellant,

or

E.F., Solicitor or
Counsel for the Appellant

To C.D.
of
and

To G.H., Esquire,
The magistrate of the above-named Magistrate's Court

[15] That form is as bare as conceivable; it does not require even the stating of the reason for appealing, far less grounds of appeal. This is consistent with the age of this form, dating back to its inclusion in the original Magistrates Courts (Civil Procedure) Rules, 1958, by Act No. 1 of 1958, the small monetary value of the claims to be appealed, the level of literacy among the humble folk at the time, and the informality of the proceedings as reflected in there being no greater burden imposed on an appellant than to give verbal notice that she/he was appealing. In this context it was commendably congruous that no objection was taken, either by the Court of Appeal or counsel for the employees, to the effectiveness of giving notice of appeal in the form of a letter rather than in the statutory form.

[16] In concluding that Sandy Lane's notifications operated to satisfy the section 240 requirement of notice, we are conscious of the distinction between giving notice of intention to appeal and actually appealing and have considered the decision of an English Divisional Court in *Regional Court in Konin, Poland (A Polish Judicial Authority) v Walerianczyk.*[2] In that extradition case the relevant legislative provisions required that an intending appellant must file and serve a sealed copy of its notice of appeal within 7 days. The appellant faxed a copy of its notice to the respondent's solicitor on the sixth day, filed its notice on the seventh day and served the sealed copy of the notice on the eighth day. The court decided the appellant had failed to give notice of appeal in time because what it had first served was only a draft notice of appeal; this

[2] [2011] 3 All ER 944 at [13] and [46].

amounted to an intention to appeal and not a notice of appeal, which had to be filed before it could be served.

[17] The material difference with the instant case is that the requirement in this case was only to give verbal notice to the Clerk in time and, on a plain factual basis, Sandy Lane had given such notice and had followed that with written notice, also within time. The fact that neither counsel nor, apparently, the clerk treated those notices as notice which complied with section 240 of the Magistrate's Court Act did not alter the fact that notice was given.

Appeals under Part 62

[18] In opposing Sandy Lane's primary case, that it had validly appealed pursuant to Part 62 of CPR, counsel for the employees argued that Part 62 only operated after an appeal brought under section 240 had been filed in the Court of Appeal. This attempt to reconcile section 240 with part 62 was valiant but in vain. The submission flies in the face of the very clear language of Part 62. That provision opens with the rubric '*Scope of this Part'* and the statement that

> *"62.1 (1) This Part deals with appeals to the Court of Appeal from*
> *(a) the High Court;*
> *(b) a magistrate's court; or*
> *(c) ... "*

1. After providing, in Part 62.2, for how to obtain leave to appeal, in a situation where leave is required, it provides

   "62.3 An appeal is brought by filing a notice of appeal in Form 20 at the Registry."

2. Form 20 appears as follows:

   "Form 20
   (Rule 62.3)
   NOTICE OF APPEAL

   SUPREME COURT OF BARBADOS
   IN THE HIGH COURT OF JUSTICE

CLAIM NO_____

BETWEEN
CLAIMANT
AND
DEFENDANT
*TAKE NOTICE that the appellant (being the claimant/defendant in the court below hereby appeals to the Court of Appeal against the decision of [Mr/Madam Justice] [Master] **[the Magistrates Court]** [ ] contained in the order dated [a copy of which is attached to this Notice]*.
1.
Details of order appealed from:
…" (emphasis added)

[19] It is, therefore, beyond doubt that Part 62 provides for an appeal to be brought from the magistrate's court by filing a notice of appeal at the Supreme Court Registry and it further provides for sundry other matters, including a 28-day time limit and for service on respondents. For completeness, we refer to Part 2.2(1), headed "Application of the Rules", which states "these Rules apply to all proceedings in the Supreme Court" and the possible argument that the Rules, therefore, do not apply to appeals from the Magistrate's Court. The short answer to that argument is that an appeal from the Magistrate's Court is an appeal to the Supreme Court and the Notice of Appeal which is filed, under both section 240 and Part 62, as shown by the respective Form 22 and Form 20 (reproduced at [14] and [18] above), is a notice filed in the Supreme Court. A notice of appeal, therefore, begins proceedings in the Supreme Court.

[20] In his written submissions, counsel for Sandy Lane identified purported conflicts between section 240 of the Magistrate's Courts Act and Part 62 of CPR and argued that the resolution of this conflict was to be achieved by treating the chronologically later Part 62, with its 28-days' time limit, as impliedly repealing the earlier 7-day provision in section 240. He made, with respect, an unpersuasive argument as to subsidiary legislation impliedly repealing primary legislation. In oral argument, however, counsel

readily embraced the proposition, presented in a query from the bench, that what exists as the reality is a situation where, under section 240, one method for appealing is provided and, under Part 62, another method for appealing is provided. We are satisfied this is the correct view of the situation that exists; however unsatisfactory such a situation may be.

[21] Contrary to the submission of counsel for the employees, we also are satisfied that the Rules Committee did not go beyond their power in making rules - subordinate legislation - which made different provision from the Magistrate's Court Act as to the method and time for appealing, among other things. This view derives from considering the provisions regarding the jurisdiction of the Court of Appeal to hear appeals from the magistrate's courts, contained in section 59 of the Supreme Court Act, which provides:

> "59. Subject to rules of court, the provisions of the Magistrates Jurisdiction and Procedure Act regulating appeals apply in respect of appeals under that Act or under any other enactment to which the procedure in respect of appeals under that Act is applied."

[22] For present purposes, this section may be regarded as establishing two things; (i) the regulating provisions which apply to appeals to the Court of Appeal from the magistrate's court are the provisions contained in the Magistrate's Court Act, but (ii) those provisions apply *subject to rules of the Supreme Court*. The expression "rules of court" is stated in the definition section of the Supreme Court Act to include then existing rules as well as rules to be made under the authority of that Act. It is the fact, therefore, that the Supreme Court Act, the primary legislation, made the regulating provisions (such as time for appealing) contained in the Magistrate's Court Act subject, or subordinate, to rules of court which would be made in the future.

[23] That future came to pass in the form of the rules of court, the CPR, which included Part 62. As ordained by the Supreme Court Act, those rules (and that Part) have overriding effect.

[24] The decision to which the applicable legal principles have led us is not a desirable one. The decision leaves existing two different procedures for appealing a magisterial decision. As mentioned, we were informed from the Bar that currently, most litigants utilise the Part 62 process, which is a modern and convenient method of appealing that

allows a more ample 28 days for appealing and for an extension of time to be granted. It is our view that the section 240 procedure for magistrate's court appeals requires legislative intervention, to lay it to rest or at least to harmonize it with the Part 62 procedure.

Outcome

[25] The appeal succeeds and accordingly we order that Sandy Lane's appeal to the Court of Appeal be restored and heard on an expedited basis. In the circumstances where this appeal became necessary without any contribution from the employees, we order that each side bears its own costs.

/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/ W. Anderson

The Hon Mr Justice W Anderson

/s/ D. Barrow

The Hon Mr Justice D Barrow