

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No GYCV2018/005
GY Civil Appeal No 127 of 2016

BETWEEN

SHERENE MONGROO

APPLICANT

AND

SASEDAI KUMARIE PERSAUD
INDRANIE MULCHAND

FIRST RESPONDENT
SECOND DEFENDANT

Before The Honourables:

Mr Justice J. Wit, JCCJ
Mr Justice D. Hayton, JCCJ
Mr Justice W. Anderson, JCCJ
Mme Justice M. Rajnauth-Lee, JCCJ
Mr Justice D. Barrow, JCCJ

On written submissions

Mr Rex H McKay, SC, Mr Neil Aubrey Boston, SC, Mr Stanley A Moore and
Ms Bettina Glasford for the Applicant

Mr Hari Ramkarran, SC and Kamal Ramkarran for the First Respondent and
Mr Chandraprakesh Satram for the Second Respondent

REASONS FOR DECISION

of

The Honourable Justices Wit, Hayton, Anderson, Rajnauth-Lee and Barrow

Delivered by
The Honourable Mr Justice Hayton
on the 30th day of November 2018

The background to this Special Leave Application

- [1] Ms Mongroo, the Applicant, claims that her father's will in favour of the Respondents, Ms Persaud and Ms Mulchand, was invalid, though this claim was rejected on 16 December 2016 by Roxane George J, who ordered that the will be probated in solemn form. The Applicant filed an appeal to the Court of Appeal on 29 December 2016, but the appeal has not yet been heard.
- [2] On 16 February 2017, in response to the Applicant's summons for a stay of execution of the judgment, Roy JA, as a single judge of the Court of Appeal, ordered a stay subject to two conditions: that the Respondent, Ms Persaud, as the named executrix of the will be permitted to apply for probate of the will but that title to the immovable property of the deceased, who had died on 15 August 2010, shall not be vested pending the hearing and determination of the appeal. The summons had focused only upon the immovable property.
- [3] As a result of the Applicant's motion to the full Court of Appeal dated 27 February 2017 and amended 18 July 2017, that court (at pp 125-135 of the Record) on 31 August 2018 dismissed the Applicant's attempt to upset the decision of Roy JA and have a full stay of execution of the High Court order until the hearing and determination of the appeal. Costs in the sum of \$75,000 were awarded against the Applicant.
- [4] The Applicant then applied under s 8 of the Caribbean Court of Justice Act for special leave to appeal this interlocutory judgment of the Court of Appeal. She claims that the part of Roy JA's order (at pp 246-247 of the Record) permitting the executrix to apply for probate of the deceased's estate should be discharged.
- [5] By order of 24 October 2018 (at pp 282-283 of the Record) this court granted leave to the Applicant to file and serve written submissions in support of her Special Leave Application on or before 7 November 2018, with leave to the Respondents to file and serve written submissions in response on or before 16 November 2018 and leave to the Applicant to file and serve written submissions, if any, in reply on or before 23 November 2018. The court further ordered that

the Application then be determined on the written submissions and the documents filed herein. Although the Applicant's attorneys have acknowledged receipt of the order no submissions have been provided by the Applicant. The Respondents, however, relying upon the Applicant's case as detailed in the Notice of Application and the supporting affidavit with exhibits appearing at pages 1-92 of the Record, duly provided their written submissions. We thus proceed to determine the case on the papers in the Record, noting that the Applicant has already had the benefit of an extension of time granted to her on 20 August 2018 (at pp 108-109 of the Record) to file her Application.

Special factors affecting the current position

[6] Two special factors appear incidentally in the judgment of the Court of Appeal at pp 128 and 134 of the Record. First, in [7] thereof, it is stated that on 31 August 2010 Chang CJ (ag) had given leave to the executrix (who was involved in the deceased's business in the deceased's lifetime) to carry on such business, called Horseshoe Racing Service, with accounting operations to be supervised by a named accounting firm. This was clearly an urgent matter to protect the value of the business before a grant of probate could be obtained. Second, it appears from [27] of the judgment that on 7 March 2017, after Roy JA's limited stay of 16 February 2017, the Applicant filed a summons leading to Cummings-Edwards C (ag), as a single judge of the Court of Appeal, on 31 July 2017 making an order (at p 252 of the Record) restraining the executrix from distributing any part of the movable or immovable assets of the deceased's estate until the hearing and determination of the substantive appeal: the summons' focus had been on movable domestic or foreign assets.

[7] Thus, the current position is that the interests of the Applicant are fully protected because a stay of execution has been effectively granted to her, except that the executrix can apply for a grant of probate. This will enable her to obtain formal recognition and rights as executrix, so that she can protect the estate by asserting any outstanding claims of the estate and so she can satisfy any claims against the estate, other than those of persons claiming to be beneficially entitled under the deceased's will. Beneficial entitlement under a will or an intestacy remains to be determined in the substantive appeal.

[8] It is thus difficult to see what the Applicant has to gain by persevering with an application for leave to appeal to this Court. Perhaps, she fears that the executrix has an ulterior motive, once granted probate, to act unlawfully, while the executrix and the other Respondent, Ms Mulchand, who alleges she and the deceased lived together as man and wife, fear that the Applicant has an ulterior motive of delaying the latter's claim for reasonable financial provision under the Family Dependents Provision Act 1990 until a grant of probate or letters of administration is obtained. While there may be scope for such inferences there is, however, no evidence that the parties are not pursuing honest claims with integrity.

Is there any real possibility of the s 8 appeal succeeding? No

[9] As shown above, special leave does not need to be granted to the Applicant because it has not been shown as necessary to prevent a substantial miscarriage of justice¹. Furthermore, there is no realistic possibility of the appeal against the Court of Appeal judgment succeeding.² As that court pointed out³, it only has a review jurisdiction over orders made by a single judge and there were no grounds for it interfering with the exercise by Roy JA of his discretion. He rightly considered that the Applicant had an arguable appeal, despite much resting on fact-findings of the trial judge⁴. He duly took account of the issues arising from the case put before him, which concentrated on the deceased's immovable property and which did not deal with the deceased's domestic or foreign movable assets and any perceived risks relating to them if probate were granted to the executrix⁵. His focus on the immovable property could not be faulted.⁶ Neither can the Court of Appeal's review of Roy JA's judgment.

¹ *Rodrigues Architects Ltd v New Building Society Limited* [2018] CCJ 09 (AJ), [17].

² *System Sales Ltd v Brown-Oxley* [2015] CCJ 1 (AJ), [11].

³ At [4]

⁴ At [23]

⁵ At [8]

⁶ At [26]

Disposition

[10] The application for special leave is refused. The Applicant is to pay the Respondents' costs relating to the application to the Caribbean Court of Justice, to be taxed if not agreed.

/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/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice D Barrow